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## THESIS

**COMPARISON OF THE ACQUISITION SYSTEMS  
OF THE FEDERAL REPUBLIC OF GERMANY  
AND THE UNITED STATES GOVERNMENTS**

by

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December 1998

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FEDERAL REPUBLIC OF GERMANY AND  
THE UNITED STATES GOVERNMENTS**

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## **ABSTRACT**

Since the end of the “Cold War” and the dismantling of the Soviet Union, significant transformations in the military, political, and industrial state of affairs have occurred – force reductions, declining budgets, taking advantage of the “peace-dividend”, consolidations, commercialization, and globalization. These changes have forced the Department of Defense of the United States and the Ministry of Defense of the Federal Republic of Germany to develop more innovative and efficient methods for developing and procuring fewer, more technically sophisticated systems with less money and personnel. By assessing and comparing the procurement systems of the United States and the Federal Republic of Germany, one makes conclusions regarding challenges faced by the Government officials and the advantages and disadvantages associated with each system. This leads to inferences about future trends and solutions for each country.



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## I. INTRODUCTION

### A. PURPOSE

The purpose of this research paper is to present, analyze, and assess the acquisition system used by the Federal Republic of Germany (FRG) in terms of military procurement in a changing global political and economic climate and to compare that system with the one used by the United States (US). Through comparative analysis, this research paper seeks to identify the policies, procedures, and methodologies which contribute to effective implementation of the respective contracting systems.

### B. BACKGROUND

Since the end of the "Cold War" and the dismantling of the Soviet Union, significant transformations in the military, political, and industrial state of affairs have occurred - force reductions, declining budgets, taking advantage of the "peace-dividend", consolidations, commercialization, and globalization. These changes have forced the Department of Defense (DoD) of the US and the Ministry of Defense (MoD) of the FRG to develop more innovative and efficient methods for developing and procuring fewer, more technically sophisticated systems with less money and personnel. By assessing and comparing the procurement processes of the US and the FRG, one makes conclusions regarding challenges faced by the Government officials and the advantages and disadvantages associated with each system. This leads to inferences about future trends and solutions for each country.

### C. AREA OF RESEARCH

The objectives of this research paper are as follows:

1. Outline the changing global threats and regional issues facing the international community and how the FRG and the US have responded.
2. Outline the changes in industry and the defense budgets and how they impact military procurements.
3. Present global market conditions and trade policy and how government policies of the FRG and US restrict and facilitate the sale of goods internationally.
4. Present an overview of the acquisition hierarchy and an overview of the acquisition process in the FRG and the US.
5. Outline the significant elements of the FRG and US contracting systems, relative to purchases of military products and services, with specific concentration on the elements of acquisition strategy and planning, solicitation process, source evaluation, negotiations, and award phases.
6. Conduct a comparative analysis of acquisition strategy and planning, solicitation process, source evaluation, negotiations, and award elements of the FRG with those of the United States' contracting process.
7. Identify the significant benefits and difficulties of the two contracting systems.
8. Conclude and recommend those elements that are advantageous in the respective systems and those which each country should consider adopting and implementing.

#### D. RESEARCH QUESTIONS

1. Primary Research Question How are the evolving international conditions and the opening of global markets impacting the government procurement processes of the US and the FRG and is it likely the governments' contracting processes will become more similar?
2. Subsidiary Research Questions
  - a) What changes have occurred in international political situations, international trade conditions, and global markets conditions that have impacted on the procurement processes of the US and the FRG?
  - b) How have the US and FRG responded to these changes?
  - c) How have the internal political and budgetary changes in the FRG and the US affected each country's procurement process?
  - d) How do the FRG and the US conduct procurement operations for major systems?
  - e) What are the significant contracting phases of the FRG and the US contracting systems?
  - f) What are the significant and related elements between the FRG and the US contracting systems?
  - g) What are the differences in the contracting phases and elements between the FRG and the US contracting systems?
  - h) What are the strengths and weaknesses of these differences?
  - i) How will the contracting processes of the US and the FRG evolve as the domestic culture and global society change?
  - j) Will these changes result in the processes becoming more similar?

#### **E. SCOPE AND LIMITATIONS**

This research paper is a study of the acquisition systems of the FRG and the US. The paper includes a general description of the international political situation, international trade conditions, the German and American procurement hierarchy and how they relate and compare to one another. The study continues with an analysis and comparison of the policies, procedures, and methodologies and how they relate to the acquisition planning, the solicitation process, source selection evaluation, negotiations and award phases of the contracting process for both "nonhard" ("dual-use") and "hard" defense procurements. However, the study does not examine infrastructure or building/construction procedures. In addition, this study does not include or address the final phase of the contracting process--contract administration. It has been determined that this phase could be a research paper unto itself.

#### **F. METHODOLOGY**

The information used in this study was obtained through three separate data collection efforts. The first method included a thorough search of the internet, the databases, books, and periodicals available in the Dudley Knox Library. The second approach involved a review of US statutes, the Federal Acquisition Regulation (FAR), textbooks, and class reading materials, including research articles and theses. The third research effort included discussions with personnel from the following US and FRG organizations and agencies in an effort to obtain more research information and materials and clarification of difficult concepts:

1. Office of the Secretary of Defense (Pentagon)
2. Defense Systems Management College, Fort Belvior, VA
3. Defense Logistics Studies Information Exchange (DLSIE), Fort Lee, VA
4. Federal Republic of Germany Liaison Office for Defense Materiel USA/Canada, Reston, VA
5. German American Chamber of Commerce, New York, NY and San Francisco, CA
6. Ministry of Economics, Bonn, Germany
7. Federal Office for Defense Technology and Procurement (BWB), Koblenz, Germany
8. Office of Defense Cooperation, US Embassy in Bonn, Germany
9. Federal Academy of Defense Administration and Technology, Mannheim, Germany
10. United States Department of Commerce, Washington, DC
11. United States Army Materiel Command, Liaison, Koblenz, Germany
12. Defense Suppliers Service, Bristol, Great Britain

Upon completion of the data collection, a comprehensive review of the historical data was conducted. In an effort to clarify terms and procedures, interviews were conducted with members of the German procurement agency to provide better understanding and more insight.

#### **G. BENEFITS OF THE STUDY**

This study serves as a basis for further research and comparisons of the acquisition systems of the FRG and the US in the pursuit of identifying ideas and developing a more effective and efficient system to meet future requirements.

## H. ORGANIZATION

This study is organized in the following manner:

1. Chapter I presents the purpose and background of the study and outlines the objectives of the study and the author's approach to conducting this study.
2. Chapter II addresses the factors influencing German and American procurement policy in the post "Cold War" era, including global threat, regional issues, changes in industry, and global market conditions and trade.
3. Chapter III presents an overview of the acquisition hierarchy of the FRG and the US.
4. Chapter IV outlines the acquisition systems of the US and the FRG.
5. Chapter V presents a detailed explanation and comparison of the acquisition strategy and planning phases of the contracting processes.
6. Chapter VI provides a detailed explanation and comparison of the solicitation phases of the contracting processes.
7. Chapter VII contains a detailed explanation and comparison of the source evaluation phases of the contracting processes.
8. Chapter VIII presents and compares the relative aspects of the negotiations processes.
9. Chapter IX assesses and compares the significant elements in the awarding phases of the processes.
10. Chapter X conducts an analysis of the two contracting systems.
11. Chapter XI draws conclusions, answers the research questions, makes recommendations, and recommends areas for future study.

## I. SUMMARY

Chapter I presented the purpose, objectives, and benefits of this research study. The primary and subsidiary research questions and the author's methodology and approach for answering these questions were presented.

Chapter II provides an extensive overview of the global, regional, and domestic political and economic changes that have occurred over the past nine years, and how these changes have impacted government procurement in the FRG and the US. The topics that are discussed include changes in the global threat and the governments' responses, changes in industry, new regional issues and each government's response, changing global market conditions and trade, procurement facilitators, and procurement restrictions. While the chapter does not specifically discuss the procurement procedures in the US and the FRG, it does articulate the environmental factors that challenge the current procurement philosophies and procedures. Particular emphasis was placed upon:

- Proposals for conducting future military operations.
- Changes in the competitive environment and the number of potential offerors for Government contracts.
- The direction regional and international agreements are headed and the implication they will have on future procurement policy in the US and the FRG.



## II. FACTORS INFLUENCING GERMAN AND AMERICAN PROCUREMENT POLICY IN THE POST "COLD WAR" ERA

### A. CHANGES IN THE GLOBAL THREAT AND THE GOVERNMENTS' RESPONSES

In the post "Cold War" world, the US and Germany are no longer facing a single galvanizing threat such as the former Soviet Union. The marginal conditions concerning security have undergone fundamental changes. These changes unleashed enormous pressures, causing a political and strategic imbalance everywhere, and this resulted in Germany's neighbors, freed from Communism and the presence of the Soviet/Russian Army, to draw closer to North Atlantic Treaty Organization (NATO). [Ref. 39:p.29] As a result, political emphasis shifted to controlling budget deficits and focusing on internal problems. This eliminated the rationale for justifying expensive military forces and advanced technological weapon systems.

In response to the reduced overt threat, the United States has reduced the strength of its forces by about a third from its "Cold War" levels. But at the same time, the political, military, religious, and ethnic instability around the world in countries like Somalia, Rwanda, Haiti, and Bosnia has caused deployment of US forces to increase by a third. [Ref. 32:p. 1] Germany has made similar adjustments to the changing threat. According to the Kohl-Gorbachev summit in July 1990 and other international agreements like the Conventional Forces Europe Treaty signed after the removal of the Berlin wall, the German Army was reduced from its "Cold War" manpower level of approximately 600,000 (including the National People's Army of the former German Democratic Republic) to 370,000. [Ref. 16:p. 606] [Ref. 19:p. 219]

Although personnel reductions were not required by international agreements, the US conducted a threat assessment and decided to take advantage of the "peace-dividend". Consequently, the US implemented budget and force reductions from their 1989 levels of \$283B [503.7B DM] in total appropriations and 770,000 active duty Army personnel.

[Ref. 23:p. 653] [Ref. 14:p. 360] After a delay in the force and budget cuts because of the "Gulf War", the US lowered its active duty Army forces to 495,000 and \$247.7B [440.9 DM] in defense appropriations by 1998.

[Ref. 44:p. 2418] This is a 35.7% cut in active duty Army personnel and a 12.5% budget cut in absolute terms or a 32.8% cut in constant dollar terms. [Ref. 23:p. 485] During this same time period, these changes caused the reduction of procurement at a pace that is twice the rate of the overall decrease in total Congressional authorized obligation authority. [Ref. 32:p. 1] However, it should be understood that this is consistent with historical norms. Procurement has always been the most volatile component of the budget during a drawdown because it is not necessary to purchase new equipment for a smaller force structure.

Consequently, over the past few years, the DoD has taken advantage of the "Cold War" equipment assets and deferred its modernization plans. This deferment of procurement has helped fund training, maintenance, quality of life and other components of near-term readiness for the DoD.

Unfortunately, this policy has significantly impacted many defense contractors in America who once could rely on major purchases from the DoD. [Ref. 33:p. i] However, as the US forces reach their steady state objectives, the DoD needs to "ramp-up" its "procurement plans by approximately 50% through the end of the FYDP (Future Year Defense Program). This procurement 'ramp-up' will be critical to US force readiness in the next century." [Ref. 32:p. 1]

## B. CHANGES IN INDUSTRY

Like many American corporations, German industry is ready and willing to accept their responsibility to ensure the military has supplies and equipment to meet its requirements. However, industry is only able to do this when governments establish calculable marginal conditions. This process includes determining the minimum capacities that will be maintained in the military given the declining budget monies. From the government's perspective, these minimum capacities are essential based on security requirements as they relate to the US and Germany's role in international organizations like United Nations Organization (UNO), European Union, NATO, Western European Union (WEU), and Council of Europe. [Ref. 16:p. 619] [Ref. 39:p. 28] Conversely, industry is interested in establishing economies of scale to meet the minimum capacities and improving margins.

The reduction of defense budgets in many countries, including the US and Germany, has led to a reduction of appropriated monies for the procurement of major systems and to an increasing push for cooperative procurements. The procurement reductions, as much as 70% in the US, have resulted in a decrease and consolidation in the American industrial complex to the point that there are only a few competitors for major defense systems. To put this consolidation in perspective, today's five largest defense conglomerates like Lockheed Martin and Northrup Grumman were more than 50 smaller independent defense contractors ten years ago. [Ref. 49:p. 4] Through improved efficiency and competitive strength, the US firms are in a position of leadership that will thrive in international markets, especially in the technological and capital goods sectors. One of the most dominant transitions has been the sale of sophisticated satellites to telecommunications companies, which are now used for

commercial global positioning systems (GPS), satellite television signals, and cellular communications. [Ref. 56:p. 28]

Similarly, in recent years, the EC has experienced consolidation in its defense industry with the German electronics giant Siemens and Britain's General Electric Corporation acquiring Britain's defense electronics firm Plessey, the merger of Dornier-Daimler-Benz-AEG (FRG) and Messerschmitt-Bolkow-Bloch (FRG), and Thomson-CSF's (French) acquiring Philip's (Dutch) defense company HAS. [Ref. 34:p. 18] While these consolidation moves are a natural progression of industry rationalization within the EC, the mergers are also intended to make European firms more competitive with their US competitors and improve their capacity for independent action. [Ref. 34:p. 19] However, there is increasing concern about the potential for exclusivity on both sides of the Atlantic, which could result in a counterproductive transatlantic competition characterized as "Fortress America" versus "Fortress Europe". [Ref. 49:p. 4]

#### **C. NEW REGIONAL ISSUES AND EACH GOVERNMENT'S RESPONSE**

While the global threat has been significantly reduced and most countries are exploiting the "peace-dividend", the successful transition of former Warsaw Pact countries to stable democracies and market economies continues. In addition, the creation of confederations coordinate their activities within a common economic zone. Simultaneously, the world has seen the emergence of countries whose boundaries are not clearly defined and which try to distract the world's attention from their internal problems by foreign policy ventures. Such conflicts may develop within the former Soviet Union as well as in the boundary regions of its formerly dominated neighboring countries. Political and economic difficulties in

former Communist countries, the worsening of living standards, and ethnic tensions and excessive nationalism in countries like the former Yugoslavia are other considerable factors of instability. [Ref. 39:p. 29] The additional factors of instability affecting other parts of Europe, the Near East, and North Africa require the Europeans to take on more responsibility for the maintenance of their security in the wake of numerous US Forces leaving Europe.

While defense budgets and force structure among NATO players have been reduced significantly, NATO has established a strategy of promoting peace, reducing conflicts and threats, deterring aggression and coercion, and responding to the full spectrum of potential crises. To respond to this new environment, the planning and execution of these new missions requires dramatic doctrine and materiel changes. Among these changes is the fact that NATO forces will most likely be involved in more limited engagements, which are fought with smaller, lighter, more mobile forces and equipment. Although these forces will have more concentrated firepower that can be precisely delivered from long range, there is also an increased likelihood of committing forces to coalition operations down to the brigade level. [Ref. 48:p. 1]

These new and expanded mission requirements and the new environment have created requirements for procurement officials to modernize current weapon systems and procure newer equipment that is better able to satisfy the needs of the forces. These actions should provide warfighters with the full protection of superior weapon systems and information superiority, but it must be achieved at much lower costs and in reduced cycle times. [Ref. 49:p. 2] Additionally, nations planning to participate in coalition operations must place a high premium on interoperability, such as, ensuring that allied systems are compatible and can be sustained through a common logistics support structure. [Ref. 32:p. 1] Some of

these equipment improvements include fielding equipment for medical support and water purification units and deploying lighter and smaller less obtrusive equipment better suited for urban areas. However, it is possible that Germany and the US may need to purchase some of these pieces of equipment from abroad due to limited industrial experience in developing these types of systems.

#### **D. CHANGING GLOBAL MARKET CONDITIONS AND TRADE**

As global trade community continues to evolve, there are increasing pressures to open new trading markets and to reduce trade restrictions in existing markets. As these changes continue in the commercial sector, there will be increased attempts to liberalize the procurement procedures for the acquisition of defense-related equipment and services in order to meet current and future requirements. This will lead to greater interdependence and increased competition from foreign firms. However, the increasing interdependence becomes more disconcerting when considering national security issues given an increasing dependency on foreign sources for critical defense components. In fact, it has triggered debate over free trade versus protectionist policies. Some have argued that globalization is undesirable because nations will always exist and act in their own interests, while others insist that nation states will gradually disappear and economic transfers will flow freely without borders.

[Ref. 34:p. 4]]

These changes are occurring at the regional and international levels, and some of the treaties require more openness. The North American Free Trade Agreement (NAFTA) and European Community (EC) agreements are excellent examples of regional agreements. And the World Trade Organization's (WTO) General Agreement on Tariffs and Trade (GATT),

which deals with trade in goods; the General Agreement on Trade in Services (GATS), which deals trade in services; and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), which deals with such issues as copyright, trademarks, patents, industrial designs and trade secrets are significant international agreements to which individual governments must adhere. As more treaties like these continue to be negotiated, countries will be forced to modify their procurement systems to comply with the new arrangements. Currently, President Clinton is pursuing a Western Hemisphere trade agreement that will facilitate freer trade. However, it is unclear how the US will deal with the export and import of defense related materiel. Specifically, consideration will have to be given to Brazil's weapon system production and Brazil's desire to support its arms industry in an effort to maintain sophisticated defense related technologies within its borders. [Ref. 53:p. 21] Some of the implications and restrictions related to this is addressed two sections later.

Since Germany is one of the most important trading partners for the United States and has the largest population and economy of any of the countries in the EC, it is a significant player in European politics. [Ref. 52:p. 2,4] By gaining a better understanding of how European agreements are formulated and their impacts on government procurement and industry, the US can gain valuable information and insight into how effective Germany has been in influencing applicable EU directives. This can provide the US with a strategic advantage as it interacts with Germany and the other members of the EC. This information can also aid the US during the development and execution of new regional and international agreements. Additionally, a thorough analysis and comparison of the two governmental contracting systems can identify advantages and disadvantages

of the respective systems, thus providing new and better ideas for tailoring the systems to meet future requirements.

Although the German Government's procurement practices are non-discriminatory and appear to comply with GATT as well as the terms outlined in the US - FRG Treaty of Friendship, Commerce, and Navigation, there are difficulties competing head to head with major German suppliers who have long-term ties to the German Government purchasing agencies. This occurs because GATT does not cover many major military systems, which will be discussed as "hard" defense procurements. [Ref. 1:p. 5] Also, contractors may encounter other difficulties like safety standards. Although safety standards are not normally discriminators, they are sometimes zealously applied when evaluating proposals and contractors and may complicate access to many products. However, as the global trading market develops and the EU evolves and gains both political and economic power, there will be a push to no longer restrict the bidding on "hard" defense materiel projects. [Ref. 26] [Ref. 28:p. 148]

In an effort to ensure that the members of the EU comply with all WTO requirements and threshold levels, the EU established directives and monetary thresholds that are more restrictive and tighter than those in the GATT agreements. Therefore, the EU passed the following directives to ensure that there is adequate compliance with the WTO requirements.

- 14 June 1993 (93/36/EEC) on the coordination of procedures for the awarding of public delivery contracts;
- 18 June 1992 (92/50/EEC) on the coordination of procedures for the awarding of public service contracts which will become part of the national Verdingungsordnung für Leistungen (Terms and

Conditions for Placing Public Orders for Supplies and Services,  
excluding Public Construction Projects, Part A). (VOL/A)  
[Ref. 2:p. 47]

Germany has further refined its regulatory procedures to ensure compliance with the EU directives. Therefore, when purchasing "nonhard" ("dual-use") products as defined by the WTO and the EU, Germany has implemented the minimum EU and GATT thresholds listed below into their regulations to ensure that tenders in excess of the thresholds will follow the GATT and EU procedures.

EU Threshold	GATT Threshold
137,537 EC	200,000 EC
262,118 DM	381,161 DM
\$149,781 (US)	\$217,806 (US)

Some of the goods and services covered by the VOL/A are mineral oil, coal, chemical products, vehicles, metals, electricity, electronic and optical equipment, maintenance of vehicles, cleaning and guarding of buildings, and others. [Ref. 2:p. 47] For situations under these monetary threshold levels, procurement officials will use the normal "National" procurement procedures. [Ref. 37] The word "National" does not mean that only German contractors can bid on contracts. Instead, it indicates that German's "National" procurement regulations apply for the items listed in the first sentence of this paragraph. When procuring those same items and the contract is anticipated to exceed the monetary thresholds above, "International" procedures are applied. This requires the German Government and the contractors to comply with GATT regulations and EU directives.

For weapons and associated services on the Military Weapons List under Article 223 of the EEC Agreement, which includes small arms, guns, ammunition, armored vehicles, military aircraft, warships, and respective repairs, the procedures above do not apply. [Ref. 2:p. 47] Instead, Germany has committed itself, as a member of the Western European Armaments Group (WEAG), which "is an association of the European NATO nations under the auspices of the WEU", to follow the WEU's European Defense Equipment Market (EDEM) conditions. [Ref. 28:p. 136] These are also applied according to monetary thresholds above and below 1M ECU, 1.906M DM [\$1.071M (US)]. The actual procedures are discussed in more detail in Chapter IV A. 1. b. 2. However, it should be known that while the Germans have an obligation to use open advertising, it is easy for the procurement authorities to use noncompetitive procedures for highly sophisticated systems. Of course, this contradicts the intent of the EU and the WEAG, but there is evidence that it is occurring frequently. Figures from the German defense bulletin to the EDEM indicate that there is considerable interest from abroad. However, the majority of companies receiving requests to submit offerors are German and under both noncompetitive and competitive procedures, most contracts are awarded to German firms. [Ref. 19:p. 242]

Currently, the FRG is tailoring its acquisition and contracting systems to meet current GATT requirements and European Union (EU) directives, although there are more considerations and changes on the horizon. One of these is the Western European Union's EDEM. The EDEM is striving to achieve harmonization of the procurement award procedures by opening up a Europe-wide competitive market for "hard" defense equipment aimed at improving procurement transparency and level technology, and to possibly create a centralized procurement agency. [Ref. 29] Another approach is the European Commission's desire to further liberalize the

European market on the basis of the European Union. [Ref. 19:p. 241] Whichever current approach or modification is successful, Germany can have a major influence on the regulation of that new public procurement market. However, depending on how these agreements are worded, there can be significant positive or negative impacts on the German economy. While the FRG is not only an active member of both the EU and the WEU, it is also one of the major partners in those organizations--economically, politically, and militarily. [Ref. 19:p. 242] Therefore, the success of a future EU or WEU defense contracting systems is likely to depend on Germany's full support and three major factors demanded by Germany:

- It must not only open the German market to foreign companies but also foreign markets to German companies (the reciprocity aspect).
- The civil servants in the contracting authorities must understand that a common European defense market is the only way to ensure the survival of the German and European defense industrial base.
- A speedy transition of national companies in European companies through mergers must be encouraged.
- If this is achieved, the German Government is likely to promote a European defense procurement system in the near future.

[Ref. 19:p. 243]

#### **E. PROCUREMENT FACILITATORS**

An alternative method of ensuring that industry provides materiel needed to satisfy new mission requirements is for the respective governments to assure the industrial complex that they are committed to

developing and producing these types of equipment and will make it economically advantageous for industry to commit to these projects.

[Ref. 19:p. 219] In an effort to achieve these mutual benefits, the US Government is encouraging and promoting export sales. The increased sales encourage industry to develop new and better systems for the military while pursuing increased sales and profits. For the governments, the increased sales improve each country's economy and provide better economies of scale for industry, which can result in decreased prices. Additionally, when these sales are made to allies, it improves interoperability among military forces. This has led the governments of NATO countries, particularly Germany, to pursue combined development and procurement of systems by multiple governments. An example of this type of endeavor is the Medium Extended-Range Air Defense System (MEADS) by German, British, American, and Italian companies from the US, FRG, United Kingdom, Italy, and Belgium. However, if this trend is to continue, it is important that the countries understand how one another's systems operate, agree, and conflict. Conflicts that violate regulations and laws can significantly impact the procurement process and disqualify offerors. Therefore, as countries modify their systems procurement, it is likely that the systems will become more similar, which could provide increased opportunities for governments to develop agreements for conducting reciprocal procurement efforts. [Ref. 24]

#### **1. German Procedures**

Currently, German industry's willingness and its improved capability to take part in these dynamic cooperative processes is being expanded and export regulations concerning "dual-use" goods have already been adjusted within Europe. For the remaining armament articles, the German Government working to modify the export authorization procedures in order to

encourage more technological development and less dependency on other nations. [Ref. 39:p. 32] This is necessary because unlike many European countries, Germany does not have a fully developed technological infrastructure. This deficiency in the German military technology establishment stems from its dismantling under the Berlin and Potsdam Agreements and Government imposed post-reconstruction restrictions on the export of defense materiel. [Ref. 13:p. 85] In an effort to correct these industrial deficiencies, proposals have been submitted to require industrial offsets. These offsets include requiring foreign contractors to compensate domestic industry through co-production, counter-purchase, or joint ventures for the benefits received through the award of a German contract. However, it is believed that the German contractors really are pushing for the German Government to improve their export possibilities and to encourage their development of sophisticated, "cutting-edge" technologies. [Ref. 13:p. 86]

## **2. US Procedures**

Unlike the FRG, the US is already exploiting its opportunities to make Direct Sales and Foreign Military Sales (FMS) to other nations. In fact, organizations to facilitate this process have been established. The Commercial Officer and the United States and Foreign Commercial Service (US&FCS) of the Department of Commerce are the principal players whose primary role is to assist US companies in entering foreign markets. The US&FCS is a worldwide network of export specialists located in 47 domestic offices and at US embassies in 65 countries. It offers a variety of market information and sales-related services to companies with export potential on all foreign markets. Furthermore, these offices have current information on commercial trends abroad and new trade opportunities. Traditionally, the US&FCS trade specialists are the first stop for

companies looking to enter foreign markets. The domestic offices can supply information and data about specific foreign markets, explain and provide a variety of specialized US&FCS services, assist in the export process, and select potential buyers and representatives. The US&FCS offices abroad also contribute by preparing their respective portion of the annually published Country Marketing Plan, which provides an overview of the commercial environment, market opportunities for US products, and other useful information. [Ref. 17:p. 16]

The US&FCS offices at US embassies work closely with the DoD Security Assistance Officer (SAO). The SAO's responsibilities include Foreign Military Sales (FMS) and associated services, including training, sales management, program monitoring, evaluation of the host government's military capabilities and requirements, armament cooperation, defense industrial cooperation, administrative support, and liaison functions. [Ref. 17:p. 16] The SAO works within the Office of Defense Cooperation (ODC) in those countries that have signed reciprocal procurement Memorandum of Understanding (MOU) with the US. [Ref. 17:p. 18] Together the US&FCS and the ODC organizations plan and host promotions for specific US companies entering a new market. [Ref. 17:p. 16]

While the encouragement of sales overseas dates back to the passage of the Foreign Assistance Act during the Kennedy administration in 1961, the ODC's role in support of defense sales overseas has dramatically changed over the past 17 years. In 1981, the Reagan Administration replaced the previous restrictive guidelines with a policy that fully supports US defense sales overseas, and in August 1988, the ODC's role was expanded to provide greater assistance in US defense industry sales. Consequently, part of the ODC mission has changed to supporting the marketing efforts of US companies while maintaining strict neutrality between US competitors. [Ref. 17:p. 18] However, the ODC should still be

able to explain to host country personnel why the purchase of a US system would be to the country's advantage. [Ref. 17:p. 16]

A final point regarding overseas sales is that the DoD has no preference whether a foreign country fills its materiel requirements through FMS or direct commercial sales. The DoD supports direct sales, if requested, by the contractor, unless the host country requests to make the purchase through FMS or the specific item is restricted to FMS. However, it is DoD's policy to provide price quotes that can be used for comparison of FMS and direct sales. [Ref. 17:p. 19]

#### **F. PROCUREMENT RESTRICTIONS**

Encouraging industry to establish strategic alliances in Europe and in the United States is another alternative to ensure industry provides the necessary materiel. [Ref. 39:p. 34] These alliances can be joint venture, mergers, or acquisitions. Daimler Benz's proposed acquisition of Chrysler is a compelling acquisition to consider. Soon the United States may be purchasing German designed trucks that were produced in the United States, but where the profits may return to Germany. As these transactions continue to develop, these corporate alliances, mergers, and takeovers will raise significant discussions about restrictive policies. Currently, there are laws in the US and Germany that restrict procurement and hamper full and open competition. This study is interested in these culturally motivated restrictions, which are counter-productive, and go against the current acquisition and trade reforms.

##### **1. United States**

Dr. Gansler, the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)), insists that "we must work to remove barriers that

prevent effective operation of competitive market forces, so that acquisition of equipment and systems that we require for coalition warfare of the future are carried out with an eye to price and performance, and not to protectionism." [Ref. 49:p. 3] Unfortunately, the US still has over 32 socioeconomic programs to assist or promote business at different levels in the US, which thereby restrict and impede competition. These programs, which range from the Buy American Act to the Blind and Other Handicapped-Made Products Act to the Small Business Act, are publicly enforced laws. [Ref. 3:p. 8]. One of the most significant of these laws is the Buy American Act (BAA), which was passed in 1933 as a way to protect US companies from foreign competition by emphasizing the acquisition of services and supplies from US firms. [Ref. 33:p. i] However, a way around the BAA is the signing of international treaties and agreements. One example is the North Atlantic Treaty Organization (NATO), which eliminates the hefty 50 percent surcharge for foreign firms. This ensures that proposals from foreign contractors are treated equally with those from American offerors. [DFARS 225.872-1] [Ref. 33:p. 15]

Another mechanism used by the US Government to bypass the BAA is the Memorandum of Understanding (MOU), an agreement between nations. An MOU between the DoD of the US and the MoD of the FRG can establish a reciprocal procurement agreement, which waives all "buy national" restrictions, customs, and duties. This allows contractors to participate on a competitive basis in both countries. The objective of this approach is to reduce cost to the governments and improve standardization and interoperability of defense equipment that will be used in coalition operations.

For the US to comply with the MOU, it waives the Buy American Act, the Balance of Payments program, and customs and duties on DoD procurements which originate in the FRG. [Ref. 28:p. 15] However, the DoD

does restrict the sources of procurement of any item determined to be vital in case of national mobilization or emergency to American and Canadian corporations. Additionally, the DoD restricts items which include classified information or sensitive technology, procurement set-asides for small businesses, and any other items restricted by law or regulation to US sources. [Ref. 17:p. 1]

The Buy American Act is not the only mechanism available or used by the US to restrict international competition from competing for contracts. Congress consistently uses the Defense Authorization and Appropriations bills as a tool to ensure that US firms win defense related contracts. These restrictions to foreign firms include items such as food, clothing, fabrics, and specialty metals which are listed in the Defense Federal Acquisition Regulation Supplement (DFARS) 225.7002. Additional restricted items include machine tools and the construction and repair of Navy ships and submarines. [Ref A:p. 13]

US defense acquisition protectionist policies keep US defense contractors focused on defense related systems and ensure that production lines remain operational, especially in times of national emergency, without fear that the US Government will make purchases from other nations. However, these protectionist policies are damaging because they invite retaliation from other nations, alienating even our closest allies. Another point to consider is that as the EC's political, economic, and military influence becomes more collective and internal trade barriers are eliminated, the respective members may become less dependent on American systems. This could result in the US receiving a cold shoulder and the reduction in exports to Europe. It is unknown whether either or both views will impact future trade, but currently, Germany and its Eurofighter aircraft partners are considering a joint buy of a next-generation air-to-air missile, Beyond Visual Range Air-to Air Missile (BVRAAM). The six-

nation team developing the Meteor missile, led by Anglo-French Matra-BAe Dynamics, is using this idea of a joint program as fodder for a "Buy-Europe" marketing campaign. Executives representing the team have warned that if their American rival, Raytheon Co., is selected, a once in a decade opportunity for consolidation of the European missile industry will be lost. They have also stressed that an award to an American firm would seal Europe's dependence on US for future needs. This effort has spurred a counterattack by US industry and the Pentagon. [Ref. 43:p. 1]

Assessments have determined that US MOUs with Germany and other European countries have served the best interests of the US because of partnering and cost sharing. The MOUs also have been an excellent foundation for armaments development and cooperation. Changes in Europe, however, are making it a more politically, socially, and economically integrated market. The latest change will come when the EuroDollar becomes the active currency in eleven European countries in January 1999. [Ref. 28:p. 16] Therefore, it is recommended that the US continue to work with its allies to reduce redundancy in research and development efforts, encourage cooperative international research and the development of new technologies, and reduce cost for the production of new systems because of economies of scale. [Ref. 33:p. ii]

A final point that the US must consider is that as the US continues to push US military sales overseas, it must consider how other countries feel about the protectionist position that the US maintains. Research indicates that there is significant negative sentiment among the German public and industry due to discriminatory practices in the US and Canada. [Ref. 13:p. 87] This has motivated German officials to encourage numerous discussions in Europe about legislating "Buy European" provisions in retaliation. While US corporations continue to consolidate and better position themselves to compete in the international market place, a

retaliation policy in Europe could be extremely costly to US corporations and the US economy. [Ref. 19:p. 242]

## 2. Germany

Currently, the FRG has only two Bundesanzeiger (German Federal Register) restrictive programs, which were started in the 1970s, that include provisions for small and medium-sized businesses and for privileged bidders such as expellees, persecutees, evacuees, and workshops for handicapped or blind people. [Ref. 2:p. 50] Previously, there was a provision which promoted awarding contracts to firms in the former East Germany; however, this has since been removed. [Ref. 26] [Ref. 37] The regulations regarding the small and medium-sized firms require that procurement offices ensure these firms are included in the bidding process and that they are awarded an appropriate number of noncompetitive contracts. [Ref. 17:p. 60] To achieve these ends, procurement personnel always try to get small or medium size companies to submit proposals. While EC rules allow for procurement personnel to determine the number of proposals to consider through random selection, the rate of small or medium size companies and foreign firms that will be given consideration will be equal to the original percentage of proposals submitted by small or medium (SoM) size companies and foreign firms.

<u>100 Firms Submit Proposals</u>	<u>Want to Consider 20 Proposals</u>
20 SoM size firms submit proposals	4 SoM size firms' proposals considered
30 Foreign firms submit proposals	6 Foreign firms' proposals considered

[Ref. 37]

Incidentally, if the small or medium-sized businesses' proposed price is higher than a large offeror, the procurement officer can either

accept the small or medium-sized business proposal if it is slightly higher or the procurement officer can ask the small or medium-sized firm to match the large firm's offer. [Ref. 2:p. 50] If the small or medium-sized firm commits to the lower price, then that firm will be awarded the contract. [Ref. 37] Additionally, in order to enable small and medium-sized businesses to compete for contracts, the BWB will subdivide large-scale supply needs into smaller batches depending on quantity and type. However, the smaller batches will be established to prevent an uneconomic subdivision. Therefore, any reservations against subdividing batches and awarding batches to multiple offerors will be included in the advertisement and in the invitation to submit a bid. [Ref. 6:p. 6]

#### **G. SUMMARY**

This chapter provided an overview of the global, regional, and domestic political and economic changes that have occurred over the past nine years and how these changes have impacted government procurement in the FRG and the US. It also presented industry's response to these changes as firms compete for fewer procurement contracts. While this chapter does not address the German and American acquisition and contracting systems directly, it presents some key points that should be reflected upon throughout the remainder of this reading. These points provide reasons for some of the changes in the current procurement systems and present justification for further changes to improve the processes. Some of these key points are:

- Equipment modernization in the US has been reduced in many areas and deferred in others to help fund training, maintenance, and other near-term readiness concerns.

- Germany is pushing forward with its modernization efforts, while reducing manning levels in units to cadre only levels. [Ref. 26]
- Industry consolidation has reduced the number of potential offerors for contracts which could reduce competition and innovation.
- Elimination of trade barriers and statutory requirements could significantly increase the number of potential offerors.
- Future military threats in the FRG and the US are less certain than they have been over the past 50 years.
- US and NATO have established a strategy where they will respond militarily to the full spectrum of potential crisis.
- The majority of US and German equipment is not suited for most operations other than war because of the equipment excessive size, weight, and lack of mobility in urban areas.
- Emphasis on interoperability and cost sharing among nations is being driven by an increase in coalition military operations and funding constraints.
- Global market conditions are emphasizing transparency, greater access, and the removal of unfair trading practices.
- Regional changes in trade policy have significantly impacted FRG's procurement procedures expanding its regulatory procedures from one to three. This will be explained in greater detail in follow-on chapters.
- Funding constraints are reducing quantity orders. Consequently, the US is embracing FMS to increase contractor orders in an effort to reduce unit prices. Germany has worked on collaborative projects with other nations, but German industry is pressing the German officials to improve export possibilities.

- While the FRG has very few socio-economic requirements, the US has many which restrict access by foreign firms. These policies may promote retaliation by nations or blocks of nations in the future.

The next chapter outlines the acquisition hierarchy of the FRG and the US. This is not to emphasize any significant differences, but to provide the reader with an understanding of where the procurement structures fit in the MoD and the DoD respectively. Individual and organization responsibilities as they relate to the respective procurement processes are presented. The chapter also articulates how these organizations interact with others in their respective systems. This information is provided as a point of reference since specific individuals and organizations will be addressed in later chapters.

### III. OVERVIEW OF ACQUISITION HIERARCHY

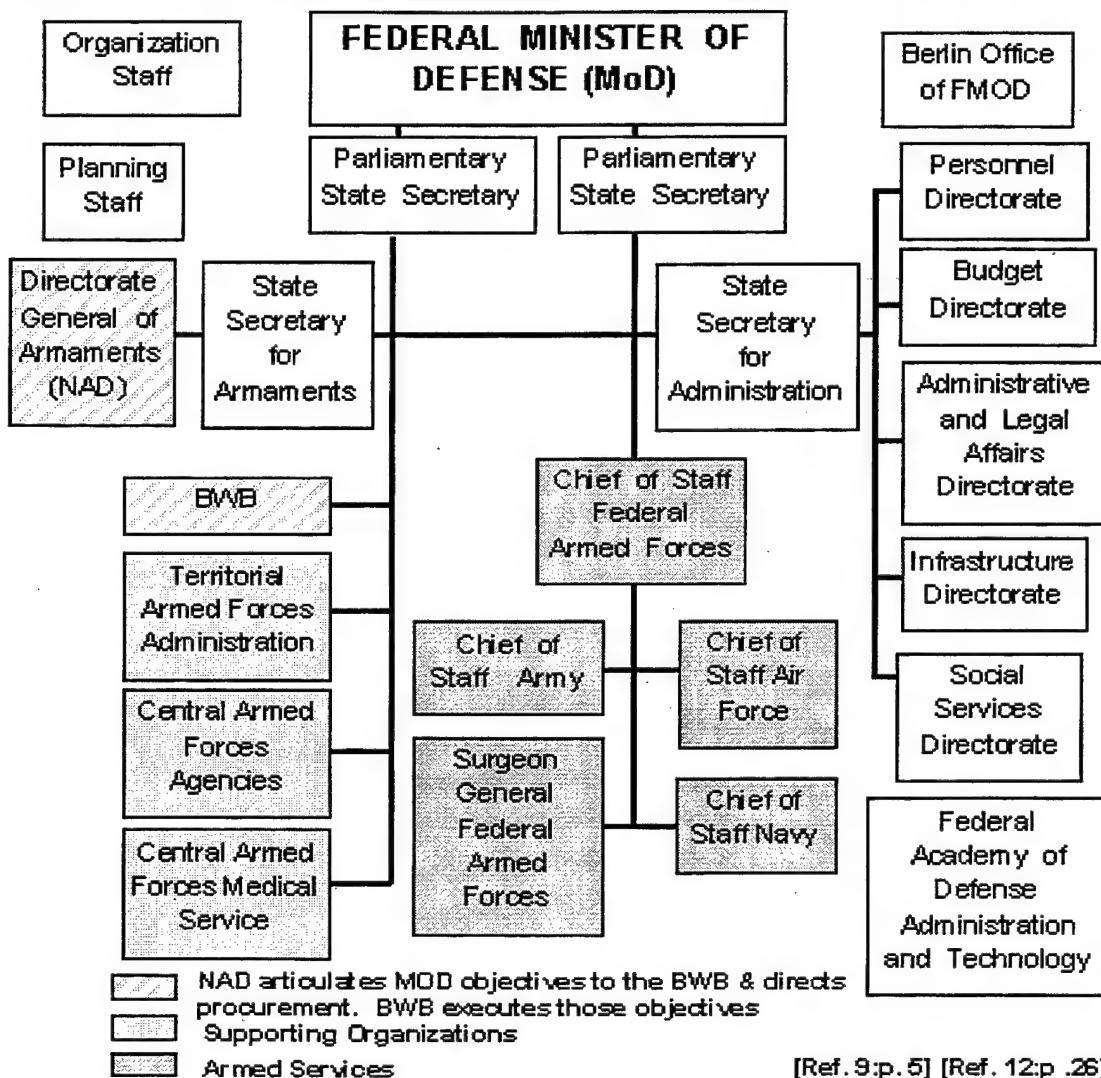
#### A. GERMAN HIERARCHY

The FRG has neither a specific industry for the development and manufacture of defense materiel nor does it have a government-owned armament industry. [Ref. 12:p. 1] Article 87b of the Grundgesetz (Basic Law of the Federal Constitution) assigns the procurement responsibility of satisfying the Armed Forces' requirements for materiel and services to the MoD and the Bundesamt für Wehrtechnik und Beschaffung (BWB), which translates to the Federal Office for Defense Technology and Procurement. [Ref. 19:p. 220] The MoD is responsible for oversight and the BWB, also known as the Bundeswehr, is responsible for execution. [Ref. 11:p. 9]

In order to ensure the effective execution of these policies, the Germans have established a hierarchy of government officials. These officials include the Directorate General of Armaments of the Federal Ministry of Defense (BMVg), the Federal Office of Defense Technology and Procurement (BWB), and the subordinate agencies on Federal territory belonging to the sphere of responsibility of the BWB. These officials are responsible for providing, in an economical manner and in line with demand, the Armed Forces with the defense material required for the performance of their mission, and for coordinating the required contracts with industry. [Ref. 2:p. 40] The "Federal Republic of Germany Acquisition System Key Players" Figure 1 on the next page illustrates the members of the MoD in the FRG and highlights the acquisition systems key players, supporting organizations and the Armed Services.

Figure 1

## FEDERAL REPUBLIC OF GERMANY ACQUISITION SYSTEM KEY PLAYERS



The Directorate of General of Armaments of the Federal MoD (BMVg) -

- Advises the executive group of MoD and the military command authorities on scientific/technical questions and on economic affairs,

- Is instrumental in the planning of new defense material as well as in the overall Bundeswehr planning,
- Plans, supervisions, and controls:
  - The basic research activities and studies of new weapons technologies, concepts, components development, and market analysis,
  - The development and procurement of new defense materiel,
  - Post-design services and maintenance of in-service defense materiel,
- Represents MoD in the technological and economic sector,
- Represents MoD within the scope of international armaments cooperation. [Ref. 25]

The Directorate General of Armaments (BMVg) is headed by the Director General of Armaments (HAL Rü) and his deputy, the Director of Armaments (AL Rü) and is divided into eight divisions. The first three operate at the macro-level as follows.

- Division Rü I "Armaments Planning and Central Armament Affairs" is responsible for organization, administrative control over the BWB, personnel management, funds management, and budgetary and financial planning
- Division Rü II "Economic and Legal Affairs" is responsible for the concentration of economic and legal capabilities as well as for the utilization/disposal of the materiel of the former East German Army (NVA);
- Division Rü III "International Defense Issues" is responsible for the fundamentals of armaments cooperation within the framework of

NATO, WEAG, and WEU, for armaments cooperation with individual nations, and for armaments exports;

The other five divisions are oriented along technical and technological lines for armaments projects and projects' monitoring as follows:

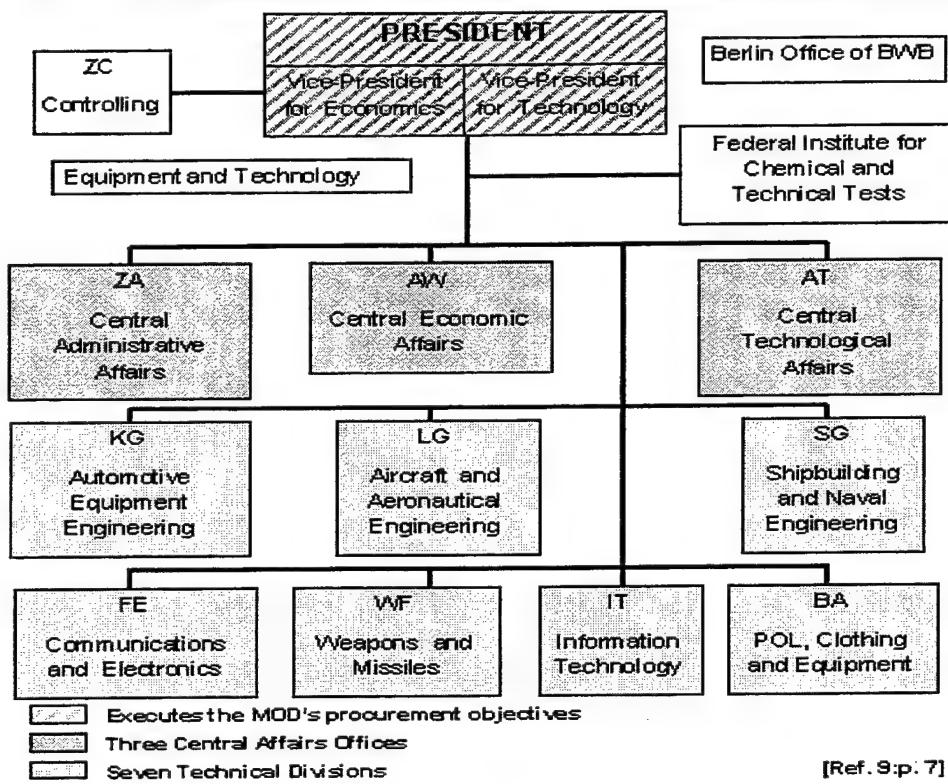
- Division Rü IV "Research and Technology, General Defense Technology",
- Division Rü V "Equipment and Technology/Land",
- Division Rü VI "Equipment and Technology/Air",
- Division Rü VII "Equipment and Technology/Sea",
- Division Rü VIII "Equipment and Technology/Reconnaissance, Command and Control, Communications, Information Technology".

[Ref. 2:p. 40]

For the execution of these projects, the BWB and its subordinate agencies are responsible for the development, testing, procurement, quality assurance and control, and post-development services for all defense materiel of the three Military Services. These agencies and their relationship within the BWB are presented in the "Federal Office For Defense Technology and Procurement (BWB)" Figure 2 on the next page. The scope of the agencies' procurement authority includes soldier's personal clothing and equipment, wheeled vehicles, tanks, ships, and combat aircraft. [Ref G:p. 27]

Figure 2

**FEDERAL OFFICE FOR DEFENSE  
TECHNOLOGY AND  
PROCUREMENT (BWB)**



A president and two vice-presidents, who oversee three general divisions and seven technical divisions, head the BWB. The three general divisions include Administrative, Economic, and Technological Affairs, and the seven technical divisions are Automotive Equipment Engineering; Aircraft and Aeronautical Engineering; Shipbuilding and Naval Engineering; Communications and Electronics; Weapons and Missiles; Information Technology; and POL, Clothing, and Equipment. The technical divisions are organized into technical centers which are responsible for the following:

- Management of weapon systems and of complex projects
- Systems engineering and integration

- Research and technology
- In-service post-design services
- Contracts . [Ref. 2:p.41]

Additionally, there are divisions only concerned with "dual-use" materiel like the division for POL, Clothing and Equipment, divisions only concerned with "hard" defense material like the division for Weapons and Missiles, and divisions like the Communications and Electronics deal with both "hard" defense and "dual-use" products division. [Ref. 19:p. 223]

The BWB provides centralized procurements for the three Services-- Army, Navy, and Air Force. [Ref. 12:p. 1] [Ref. 2:p. 35] The FRG has decided that this is the desired approach for procurement because it demonstrates the political responsibility of the MoD over the BWB and the Armed Forces and it avoids costly parallel developments by the individual Services. [Ref. 16:p. 618] Furthermore, the BWB is almost exclusively career civilian staff, with only five percent of its personnel serving in the military. [Ref. 11:p. 9] The BWB's former Deputy President for Economics, Dr. Lothar Weber, believes that the "principle of dialogue between the civil administration and the armed forces, has worked well and has not lead to friction in the procurement process." [Ref. 16:p. 618] Additionally, although many MoD civilian and military officials, in the rank of full colonel and above, tend to be associated with the party or coalition in power, they are regarded as career civil servants, remaining relatively insulated from potential political pressures. [Ref. 11:p. 9]

Similar to the conventional military forces in Germany, the BWB was forced to reduce its personnel numbers in response to declining budgets and number of procurements. Previously, the BWB employed over 23,000 personnel, but the heavy financial burden of the German Reunification and the reduction of the Bundeswehr manpower allocation has lowered the staff

to 14,900. An additional 1,900 positions will be terminated between now and the year 2005. [Ref. 12:p. 6]

#### B. US HIERARCHY

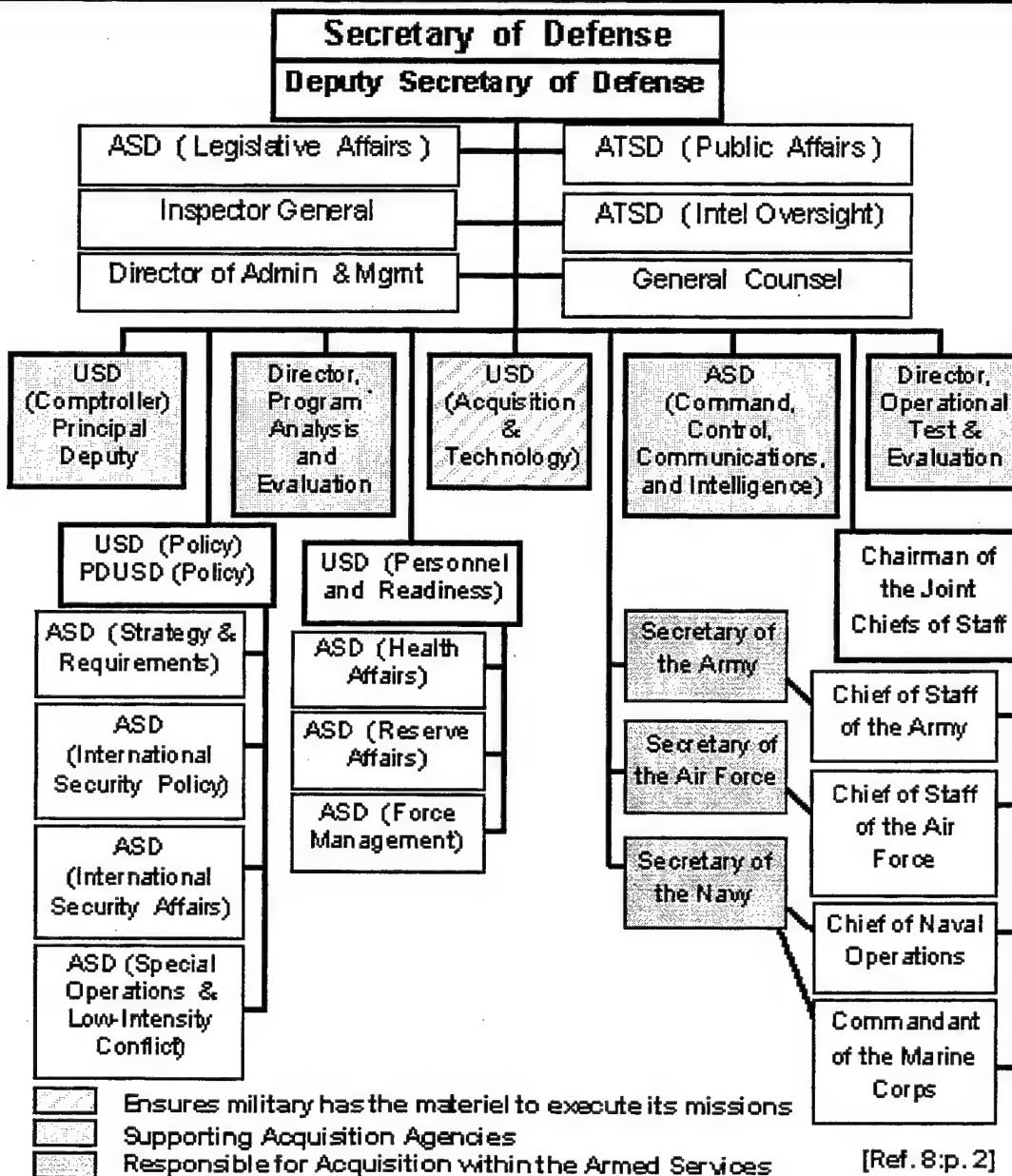
Like Germany, the US military is subordinate to the elected civilian officials in Congress and the Commander-in-Chief (the President). Similarly, DoD's highest-ranking officials are Presidential appointees, approved by the Senate. The highest of these appointees is the Secretary of Defense (SECDEF) who, with the President, decides the US military's priorities and strategies. This study is concerned with the acquisition portion of the execution of their decisions. These duties are performed by the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)), who is also a political appointee. The USD(A&T) serves as both the principal acquisition official to the DoD and the principal advisor to the SECDEF on procurement, technological developments, and impact studies as they relate to the execution of DoD roles and missions. His other responsibilities, which this study will not elaborate on, include:

- Chairs the Defense Acquisition Board (DAB),
- Develops acquisition program guidance and ensures compliance with established acquisition policy and procedures,
- Serves as National Armaments Director and SECDEF representative to the Four Power Conference,
- Administers the Defense Acquisition Executive Summary (DAES) and the Cost/Schedule Control Systems Criteria (C/SCSC) systems, and
- Establishes policy for the training and career development of acquisition personnel. [Ref. 45:p. 27]

The other key players in the US acquisition system are illustrated in the "United States Acquisition System Key Players" Figure 3 below.

Figure 3

## UNITED STATES ACQUISITION SYSTEM KEY PLAYERS



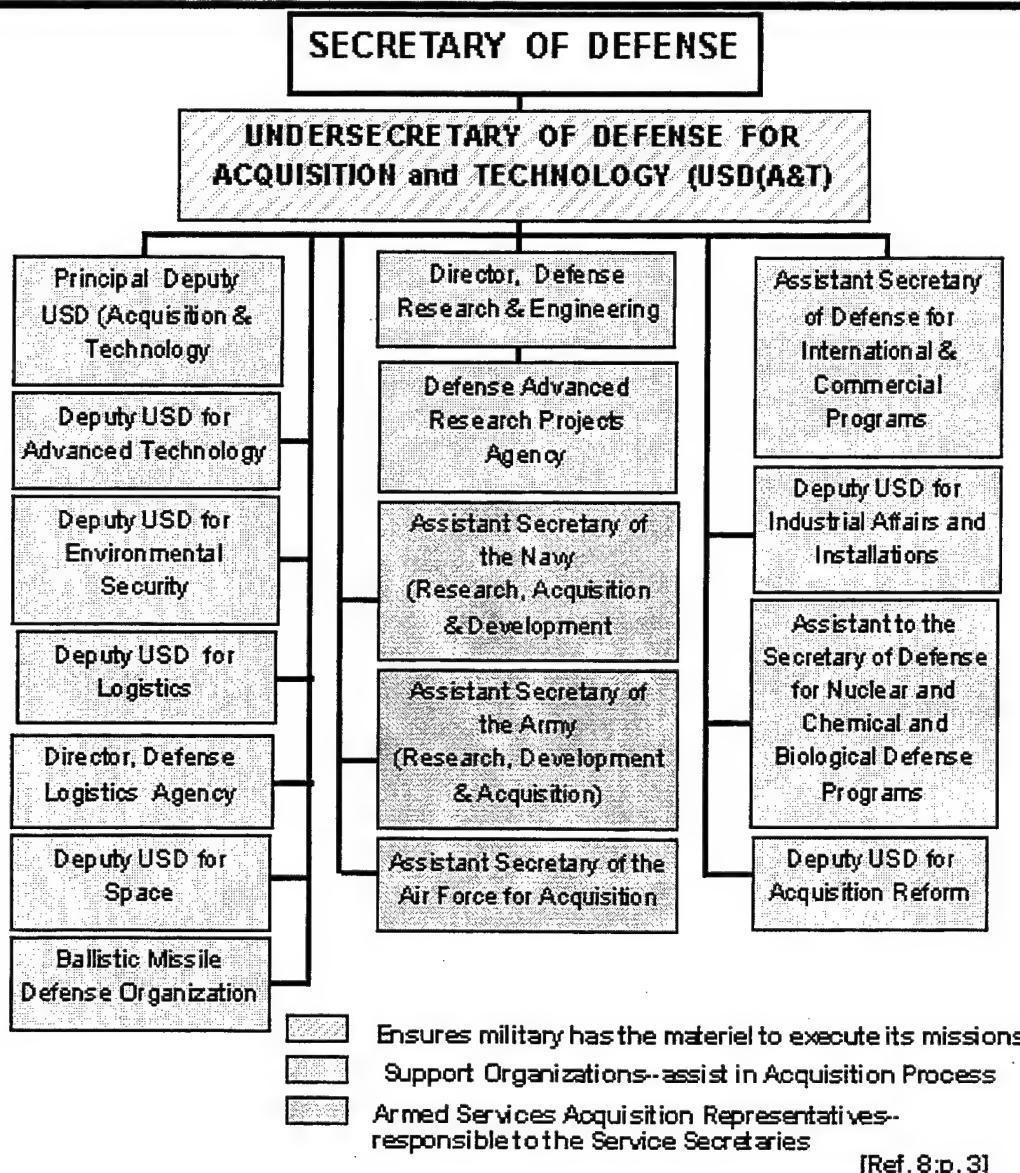
These individuals and organizations have significant roles and responsibilities within the DoD, but the Service Secretaries and the other highlighted elements in the chart are the significant players in the acquisition process. This study only explores the roles that the Secretaries play in the acquisition process at the macro-level through an administrative relationship with the USD(A&T). This is addressed further later.

Although the US Government operates research facilities to develop technologies and other facilities that can be operated by contractor personnel to produce munitions, it does not own a specific industry for the development and manufacture of defense materiel. Therefore, the US has developed an extensive and sophisticated procurement system, based primarily on administrative relationships, for providing the necessary weapon systems and equipment required by America's fighting forces. To facilitate this process, the Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)) has developed an extensive procurement organization with areas of responsibility to include all matters related to DoD acquisitions; Defense Research and Engineering; Acquisition Reform; Advanced Technology; International Programs; Logistics; Space; Ballistic Missile Defense Organization; Defense Logistics Agency; Nuclear, Chemical, and Biological Programs; Environmental Security; and Industrial Affairs and Installation.

All of the organizations under the "Under Secretary of Defense for Acquisition and Technology" are illustrated in Figure 4 on the next page. The USD (A&T), the assistant Service secretaries, and the other 13 organizations which provide support, sustainment, and reform of the acquisition process highlight the organizations accordingly.

Figure 4

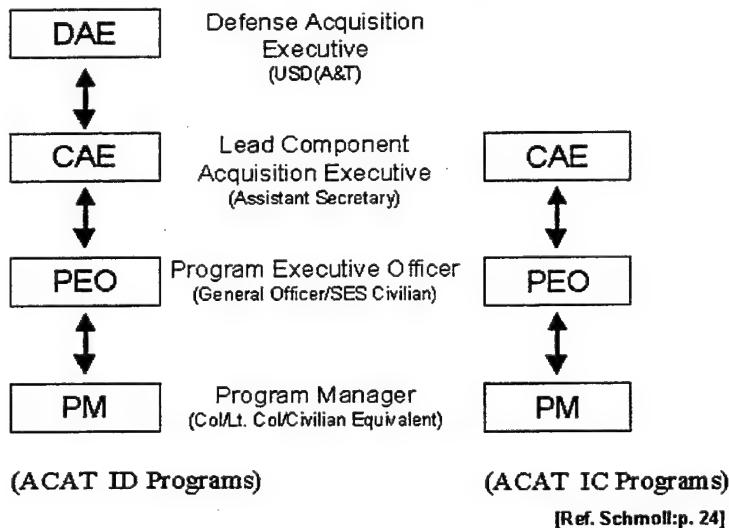
## UNDERSECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY



The USD(A&T) also maintains the position as the Defense Acquisition Executive (DAE) and is responsible for all acquisition matters within the DoD. Similarly, the Secretary of each Military Department ensures that

policies and procedures governing the operation of the Department's acquisition, requirements, and budgeting systems are effectively implemented. Therefore, each Secretary designates a single, full-time Acquisition Executive known as the Service Acquisition Executive (SAE) or the Component Acquisition Executive (CAE), selects Program Executive Officers (PEOs), and establishes a centralized system for selecting PMs. [Ref. 47:p. 9] The CAE supervises the operation of the acquisition system within their respective Component and serves as decision authority for assigned programs. The PEOs review and assess their assigned programs and make decisions based on recommendations from the PM's proposed action plans. Finally, the PMs manage their assigned programs in a manner consistent with the policies and principles articulated in DoD Directive 5000.1 and the PM Bill of Rights. Additionally, the PMs provide assessment of their program status and risk to their respective PEO, as well as actively manage program cost, performance, and schedules, providing assessments to the contractor as necessary. [Ref. 47:p. 10] The "DoD Acquisition Authority Chain" Figure 5 below is an excellent illustration of the chain of authority from the PM to the DAE.

Figure 5  
DoD Acquisition Authority Chain



[Ref. Schmoll:p. 24]

To illustrate the disparity in the size of the US and Germany acquisition workforce, one can review a comparison of the BWB's 14,900 person workforce to the US Army's 69,279 person workforce to demonstrate this point. While the BWB experienced a 35% force reduction, the US Army's reduction was 55% from its 1989 levels of 157,000. [Ref. S:p. 24] Like Germany, the majority of the acquisition workforce is civilians. Although, the number of military acquisition professionals in the US varies from Service to Service, the density of military acquisition personnel in the US Army is 6.2% verses the 5% in the BWB. The ranks of the military acquisition professionals also vary and the services have different methods of accessing personnel into the acquisition specialty. The US Air Force assigns newly commissioned Lieutenants as acquisition professionals and the Marines have noncommissioned officers serving as acquisition professionals. Conversely, the US Army does not assess officers into the acquisition corps until they are Captains and have become branch qualified in a basic branch of service such as infantry or armor. However, the Army is in the process of developing mechanisms for making noncommissioned officers acquisition professional. [Ref. 51:p. 24] The jury is out as to which strategy is most effective since all methods have advantages and disadvantages that will not be explored in this study.

#### **C. SUMMARY**

This chapter provided an overview of the acquisition hierarchy of the FRG and the US by articulating the defense organizations' structures, the procurement organizations' structures, the key procurement players, and the responsibilities of the key players within each system. The chapter also creates points of reference regarding individual positions and responsibilities that will be helpful in future chapters.

The next chapter provides an overview of the acquisition systems of the FRG and the US. It specifically demonstrates the methods used for determining major programs and provides a macro-level illustration and overview of the acquisition processes. The majority of the chapter is dedicated to discussing the differing procurement philosophies-- centralized in the FRG and decentralized in the US. Emphasis on this chapter centers around the advantages and disadvantages of the centralized and decentralized approaches to procuring major systems. German centralized approach appears convoluted and confusing because of the EC, GATT, WEAG, and "National" requirements. The BWB, however, is well prepared to handle the challenge.



#### IV. ACQUISITION SYSTEMS OVERVIEW

The Bundeswehr's procurement efforts are fully integrated into Germany's economic and political system; however, the Bundeswehr does not act as a privileged customer on the market. While the BWB awards contracts to firms according to strict, mandatory rules, there are no differences between a contract awarded by the Government or a civilian entity. [Ref. 2:p. 35] [Ref. 12:p. 2] Government contracts follow the same rules of civil law. There are no special procurement laws or acts regulating military acquisition. [Ref. 19:p. 221] Just like commercial companies who conduct business with the BWB, the BWB is required to pay value-added taxes (VAT) for contracts awarded to it by other Government agencies. [Ref. 26] This is in sharp contrast to the United States where commercial firms pay taxes on income earned from Government contracts; but Government agencies are not subject to taxation on work that is performed for its agencies. The lack of laws, like Competition in Contracting Act (CICA) and the Buy America Act in Germany, enable the BWB to act more like a private entity conducting civil contracting rather than like the US Government contracting organizations. [Ref. 19:p. 221]

##### A. DETERMINATION OF MAJOR PROGRAMS

The FRG designates a project "as a major weapon system if it is a complex program, entails technological advancements, large monetary outlays or involves a cooperative effort with other countries." [Ref. 35:p. 61] The US, on the other hand, uses the monetary expenditure and decision authority as the primary guide for determining the appropriate acquisition category. These categories are illustrated in the "Acquisition Categories (ACATs)" Figure 6 on the next page.

Figure 6

### Acquisition Categories (ACATs)

<b>ACAT ID:</b>	DAB Review Designated by DAE Decision by DAE	\$355M RDT&E or \$2.135B Procurement (FY96 Constant \$)
<b>ACAT IC:</b>	Component (Svc HQ) Review Designated by DAE Decision by Svc Sec/CAE	
<b>ACAT II:</b>	Does Not Meet ACAT I Criteria Designated by Svc Sec/CAE Decision by Svc Sec/CAE	\$136M RDT&E or \$636M Procurement (FY96 Constant \$)
<b>ACAT III:</b>	Does Not Meet ACAT I, IA or II Criteria Designated by CAE Decision at lowest appropriate level	No Fiscal Criteria

[Ref. Schmolli:p. 31]

An ACAT I program is estimated by the USD(A&T) to require an eventual expenditure for research, development, test, and evaluation of more than \$355M or procurement of more than \$2.135B (FY96 constant dollars) and is termed as a Major Defense Acquisition Program (MDAP). For the ACAT ID programs the "D" refers to the Defense Acquisition Board (DAB), which advises the USD(A&T) at major decision points. Similarly, the ACAT IC's Milestone Decision Authority (MDA) is the DoD Component Head or, if delegated, the DoD CAE. ACAT II programs are estimated by the DoD Component Head to require eventual expenditure for research, development, test, and evaluation of more than \$136M or procurement of more than \$636M (FY96 constant dollars) or has been designated as an ACAT II program by the DoD Component Head. Finally, the ACAT III programs have a Milestone Decision Authority designated by the CAE. [Ref. 45:p. 33]

Any acquisition process would not be complete without oversight. In the US, this oversight is conducted by the Legislative Branch of the Government to ensure that the Executive Branch is meeting the objectives of the people. For large programs, the US system requires notification of Congress of the procurement and final selection of the contractor. In

Germany, the Parliament is informed annually about armament planning on the basis of the Bundeswehr Plan. This enables the Parliament to review the projects in context and to ensure there is sufficient funding. During this process, the MoD provides evidence that the projects are technically and operationally prudent, as well as cost effective. Additionally, Federal regulations require that the Parliament be informed of contracts awarded in excess of 50M DM. [Ref. 11:p. 24] [Ref. 26] [Ref. 28:p. 123] FRG regulations, also, direct that any real cost growth of 15% or more must be reported to the executive body of the MoD. Similar to the US, Germany's defense budget is continually under reduction pressures. Therefore, the MoD's budget is fixed and the reprogramming of funds from other projects must offset cost growth in one project. [Ref. 7:p. 53]

#### **B. GERMAN ACQUISITION PROCESS**

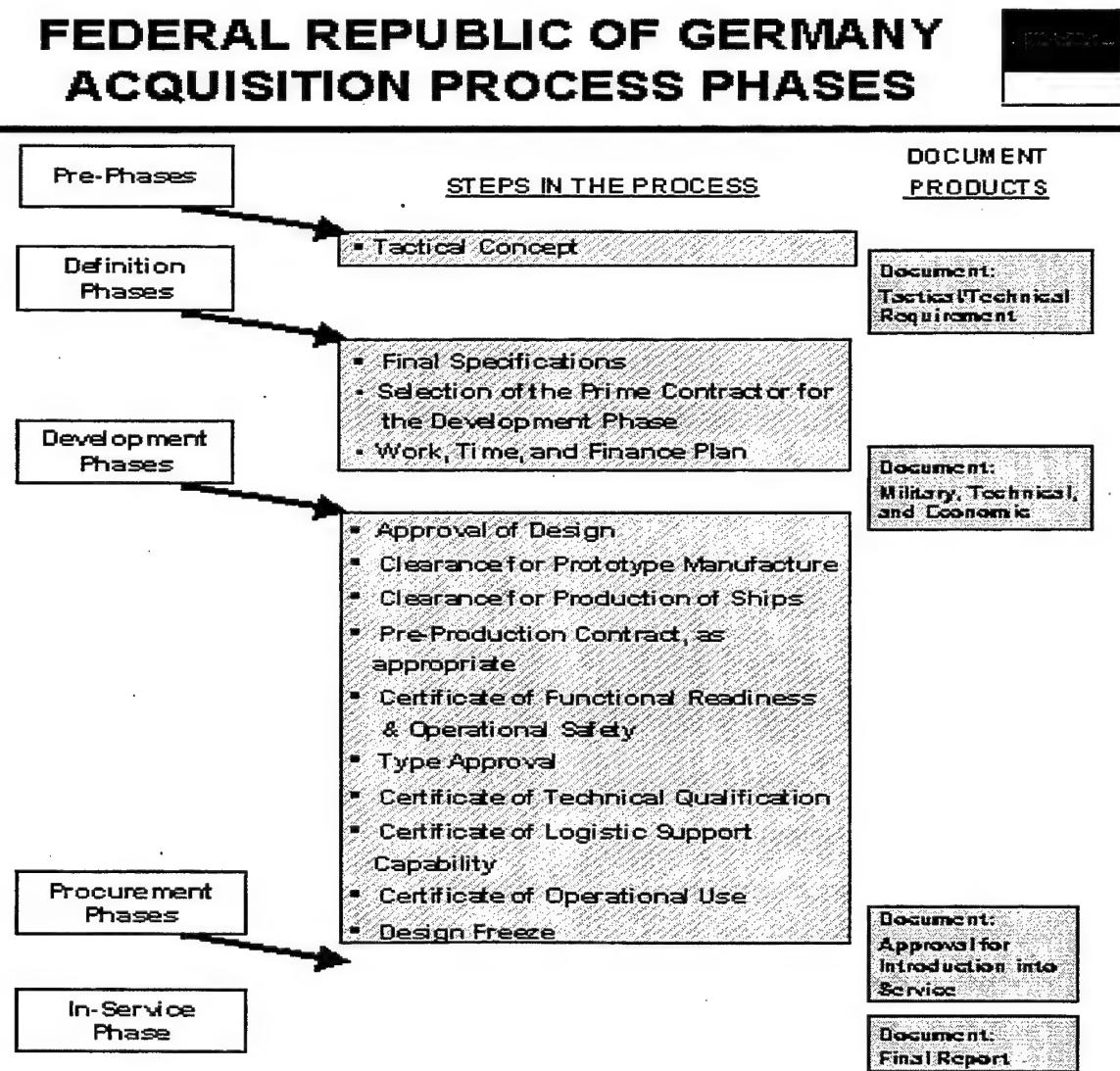
In 1993, the Bundeswehr Plan (German Army Plan) covering 1993-2005 was established. It is not a legally binding budget and is a continually updated outline of long range plans. [Ref. 5:p. 2] The annual defense budget establishes the Bundeswehr's financial scope for awarding contracts and placing orders. [Ref. 2:p. 35] The 1998 German defense budget amounts to 46.7B DM (\$29B US) up from 46.3B DM (\$29B US) last year but down from 48.24B DM (\$30B US) in 1996 year. [Ref. 28:p. 121] Approximately, 27% of the 1998 budget, up from 26% in 1996, is earmarked for military technological research, development, procurement and maintenance of material, and the procurement of defense material represents about 51% of this at a level of 6.4B DM (\$3.7B US). [Ref. 2:p. 37] These monies are spent on military technological research, development, procurement and maintenance. [Ref. 12:p. 2] The Bundeswehr awards contracts to industry within all five phases of their German acquisition process:

- Contracts for study, research and development are awarded in the Pre-Phase, Definition Phase and Development Phase
- Procurement contracts are awarded in the Procurement Phase
- Maintenance and repair contracts are awarded in the In-Service Phase. [Ref. 2:p. 36]

The flow of the FRG's acquisition process through the phases is presented in the "Federal Republic of Germany Acquisition Process Phases" Figure 7 illustration below.

Figure 7

## FEDERAL REPUBLIC OF GERMANY ACQUISITION PROCESS PHASES



[Ref. 2:p. 39]

While the MoD weapon systems acquisition process is governed by the principle of civilian control, there is continuous interaction with the military elements involved in the weapon systems procurement. The Directorate General of Armaments and the BWB are responsible for the system definition, development, test and evaluation, and production. However, the Military Services are involved throughout the acquisition process by determining their requirements, providing logistics support, performing operational testing, and maintaining the weapon system.

[Ref. 35:p. 56] Consequently, the MoD uses the System Manager's Working Group, which conducts meetings throughout the procurement process to monitor the acquisition process and approve the transition to the next phase in the process. [Ref. 35:p. 57] The Group functions in the same capacity as the MDA under the US system.

In Germany, contracts are awarded by the centralized (Koblenz) and decentralized (local) procurement agencies, where decentralized procurement refers to the location of the procuring personnel and not their association to the Services. These two agencies share the task of satisfying the requirements for providing goods and services to the Armed Forces and civil administration. [Ref. 2:p. 43] [Ref. 12:p. 3] The first of these, which this study emphasizes, is the central procurement process.

### **1. Centralized Procurements**

For centralized procurements, the process encompasses the consolidation of all the requirements of the Bundeswehr for a good or service, and the procurement of them together. This creates large orders in pursuit of reduced unit prices. Some of the study, research, and development contracts are initial and follow-up requirements for materiel and services for the three Services. These include: vehicles, Air Force and Navy equipment, communications equipment, weapons, ammunition,

missiles, fuel, food, clothing, and repair work. [Ref. 2:p. 43] These types of contracts are awarded by the BWB through seven specific technical divisions discussed previously, which are located in Koblenz.

[Ref. 12:p. 3] However, the MoD sometimes retains authority for awarding contracts at his level. [Ref. 2:p. 44] Two examples of the Ministry of Defense awarding contracts are the joint combat aircraft projects Tornado and European Fighter Aircraft (EFA). [Ref. 16:p. 618] Once the FRG identifies the procurement requirements at the Armaments Directorate level of the MoD, the MoD directs the BWB to begin their acquisition process.

[Ref. 10:p. 3] The BWB is responsible for contracting pre-development work and, if the program is sanctioned or if the item is currently available, then the BWB will award contracts for full development, production, and/or procurement. [Ref. 4:sec. F]

Although the FRG always requires high standards of technical competence, efficiency, and reliability of its contractors, the BWB applies different awarding procedures for "National" and "International" contracts depending on the type of required goods and services.

PROCUREMENT CATEGORIES	REGULATIONS	
	<u>US</u>	<u>FRG</u>
"Nonhard" Supplies and Services (S&S)	FAR	VOL/A
"Nonhard" S&S over the threshold	FAR & GATT	VOL/A, EC & GATT
"Hard" Defense (Major Weapon Systems)	FAR	VOL/A
"Hard" Defense over the threshold	FAR & GATT	VOL/A & WEAG

FAR -- Federal Acquisition Regulation (United States procurement regulation used by all Federal Government agencies)

GATT - General Agreement on Trade and Tariffs (For EU members they follow EU directives because they include all GATT objectives)

As you can see the thresholds are higher here: 200,000 ECU or  
381,161 DM

VOL/A -- Verdingungsordnung für Leistungen (Terms and Conditions for Placing Public Orders for Supplies and Services, excluding Public Construction Projects, Part A). "National" procedures.

EC - European Community Directives require international competition for supplies and services in excess of the following thresholds 137,537 ECU or 262,118 DM.

WEAG - Western European Armaments Group (13 European Nations) The nations have agreed that "hard" defense contracts in excess of 1,000,000 ECU or 1,905,800 DM will be open to international firms to submit proposals. [Ref. 37]

a) "National" Procedures

The base administrative guideline for awarding "National" contracts in Germany is the Verdingungsordnung für Leistungen (VOL/A) (Terms and Conditions for Placing Public Orders for Supplies and Services, excluding Public Construction Projects, Part A). [Ref. 2:p. 44] Although this document is just one of many BWB reference documents, it contains most of the regulatory procedures and guidelines contained in this study. Specifically, it decrees that, as a rule, contracts must be awarded in a competitive basis and to ensure fairness all bidders, foreign and domestic, must be treated equitably. [Ref. 2:p. 45] Similarly, the United States' Federal Acquisition Regulation (FAR) contains many of the American elements discussed in this study.

The most significant supplies and services not covered by the VOL/A includes construction projects, which are covered by the Verdingungsordnung für Bauleistungen -VOB/A (Terms and Conditions concerning Government Contracts on Construction Work - Part A). Other

supplies and services not covered by the VOL/A are those determined within the scope of free-lance activities or offered in competition with free-lance activities of commercial enterprises. These free-lance activities include independently practiced activities in scientific, artistic, literary, pedagogic, or educational areas, independent professional activities such as physicians, dental surgeons, veterinarians, lawyers, notaries, patent attorneys, and other similar professional personnel.

[Ref. 6:p. 1]

*b) "International" Procedures*

The "International" rules, which apply to a particular procurement, depend on whether it is a "nonhard" ("dual-use") or "hard" defense material.

1) "Nonhard" ("dual-use") Defense Materiel

The primary "International" regulations for "nonhard" material are the relevant EC Directives and the WTO - agreements on government procurement. To ensure compliance with the EC and WTO requirements, Germany has integrated "a-paragraph" provisions.

[Ref. 19:p. 225] The BWB must apply the "a-paragraph" provisions when "dual-use" materials are procured above the following thresholds as discussed in Chapter II. D. -

EU Thresholds	GATT Thresholds
137,537 EC	200,000 EC
262,118 DM	381,161 DM
\$149,781 (US)	\$217,806 (US)

For "dual-use" material and services situations under these thresholds, procurement officials will use the normal "National" procurement procedures. [Ref. 37]

Currently, the EC is considering shifting its "dual-use" procurement directives above the threshold to the restricted procedures from the current system of negotiated procedure, which provides more opportunities for contractors. Instead of using the most competitive procedure (open) or the least competitive procedure (negotiated), the restricted procedure provides a compromise. EC officials consider this to be a fair approach since these procurements involve significant costs and this avoids the security risks associated with the open procedures. Conversely, the restricted procedures will ensure a certain level of competition that is currently not present. [Ref. 19:p. 231]

## 2) "Hard" Defense Materiel

In 1988, the Independent European Programme Group (IEPG), renamed as the Western European Armaments Group (WEAG) in 1993, was established in an effort to foster increased competition in the defense industry and make the defense procurement process more transparent. [Ref. 19:p. 240] [Ref. 37] The 13 member nations agreed that "hard" defense contracts in excess of 1,000,000 ECU or 1,905,800 DM [\$1,089,029 (US)] will be open to international firms to submit proposals for items listed in the Military Weapons List under Article 223 of the EEC Agreement. This list includes weapons, ammunition, rockets, military aircraft, warships, and armored vehicles. [Ref. 2:p. 47] On the basis of this agreement, EDEM was created to more efficiently use resources, achieve harmonization of the procurement process while creating an open European-wide competitive market for "hard" defense equipment, to

strengthen the European defense technological and industrial base, and increase research and development cooperation. [Ref. 19:p. 241]

The political, legal, and economic conditions for the establishment of a European Armament Agency (EAA) do not currently exist in Europe. The concerned nations are reluctant to transfer sovereign decisions in the armament sector to such an institution and to open their respective national armament markets, which are protected by Article 223 of the EEC treaty, to fair and open competition. While the concerned nations have succeeded in integrating the WEAG in the WEU, it will still be a long way to the EAA, which probably will not be realized until the turn of the millenium. [Ref. 39:p. 34]

The intensified cooperation within Europe is not intended to distance the US, Europe's traditional partner in the armament sector. Any assumption that Europe could do without the US would be light-minded and even presumptuous in view of America's importance to Europe's defense. However, in the past, the Europeans were not equivalent partners with the US, neither with respect to their demands nor their resources. Therefore, Europe must pool its armament demand if it is going to be an equal partner with the US. This increased European cooperation and concentration of the European armament demands is in the interest of the US given the budget cuts on both sides of the Atlantic.

[Ref. 39:p. 34]

Additionally, the WEAG has established goals to help developing member nations like Greece, Portugal, and Turkey strengthen their defense industries. [Ref. 37] In an effort to assess the progress of increasing the diversification of sales across Europe, the WEAG arms section in Brussels is collecting data, which contains monetary levels of imports and exports to insure that the WEAG goals are being achieved. The data are scrutinized, but maintained confidentially by the WEU. [Ref. 37]

*c) "Multi-national" Projects*

In 1994, there were more than 70 major projects being managed by BWB, of which 34 were joint projects. Therefore, the BWB is well-prepared for new and closer procurement tasks and its staff has repeatedly demonstrated competence and efficiency within the scope of "National" and "Multi-national" projects. Consequently, the BWB will be a reliable partner in any dynamic cooperation process. [Ref. 39:p. 34]

It is the MoD's belief that once the Military Services, the engineers and contracts personnel of the BWB have completed their work, contracts should be awarded and industry should be allowed to develop the weapon system. Therefore, the MoD prefers to place a contract with one firm, along with the responsibility for all subcontractors, Government furnished equipment, and for the performance data specified in the contract. However, the MoD uses the program manager and quality assurance inspectors to control the prime contractor through all phases of the acquisition process. [Ref. 7:p. 53] [Ref. 35:p. 60]

**2. Decentralized Procurements**

Decentralized procurement procedures involve several procurement agencies covering the requirements of a regional area of the country. When centralized procurement is impractical or when economic conditions dictate, decentralized procurement procedures are utilized. Items which normally fit this category are commercial items of supply for the daily demand of units and garrisons. These items include food for daily consumption, consumables for maintenance of accommodations and garrisons, spare parts for commercial items, repair contracts, and guarding and cleaning services.

Decentralized procurement is executed by the seven Military District Administrative Offices, which have approximately 173 subordinate garrison

administrative offices. [Ref. 12:p. 4] [Ref. 2:p. 44] These stations normally have one BWB member assigned to the location, which can make purchases for operations and support under 20,000 DM. These representatives are required to only make telephonic solicitations with three or more companies. After that, he or she will select the desired firm and prepare a two-page contract. [Ref. 26] Another difference in the acquisition processes of Germany and the US that is not evident in the charts presented is that the contracting officers in Germany are assigned to a project manager and are responsible for establishing contracts with industry for the concept, definition, development and procurement of the weapon systems. [Ref. 7:p. 52] [Ref. 35:p. 58]

### **C. US ACQUISITION PROCESS**

The 1998 US defense budget appropriations amount is \$247.7B [440.9B DM] up from \$244.3B [434.9B DM] last year and up from \$242.1B [430.9B DM] in 1996 year. [Ref. 44:p. 2418] [Ref. 50:p. 10-34] Approximately, 33.7% of the 1998 budget, up from 33.3% in 1996, is earmarked for military technological research, development, procurement and maintenance of material, and the procurement of defense material represents about 54.6% of this at a level of \$45.6B [81.2 DM]. [Ref. 44:p. 2418] [Ref. 50:p. 10-34]

These monies are spent on military technological research, development, procurement and maintenance of material. Like Germany, the US awards contracts to industry within all phases of the acquisition process:

- Concept Exploration

- Program Definition and Risk Reduction
- Engineering and Manufacturing Development
- Production, Fielding/Deployment, and Operational Support

[Ref. 46:part 1 p. 4]

Upon completion of the requirements for each phase, the MDA, like the German Systems Manager's Working Group, assesses each program and determines if the objectives for each phase have been achieved prior to moving to the next phase. Typically, the criteria established for each milestone includes approval of the:

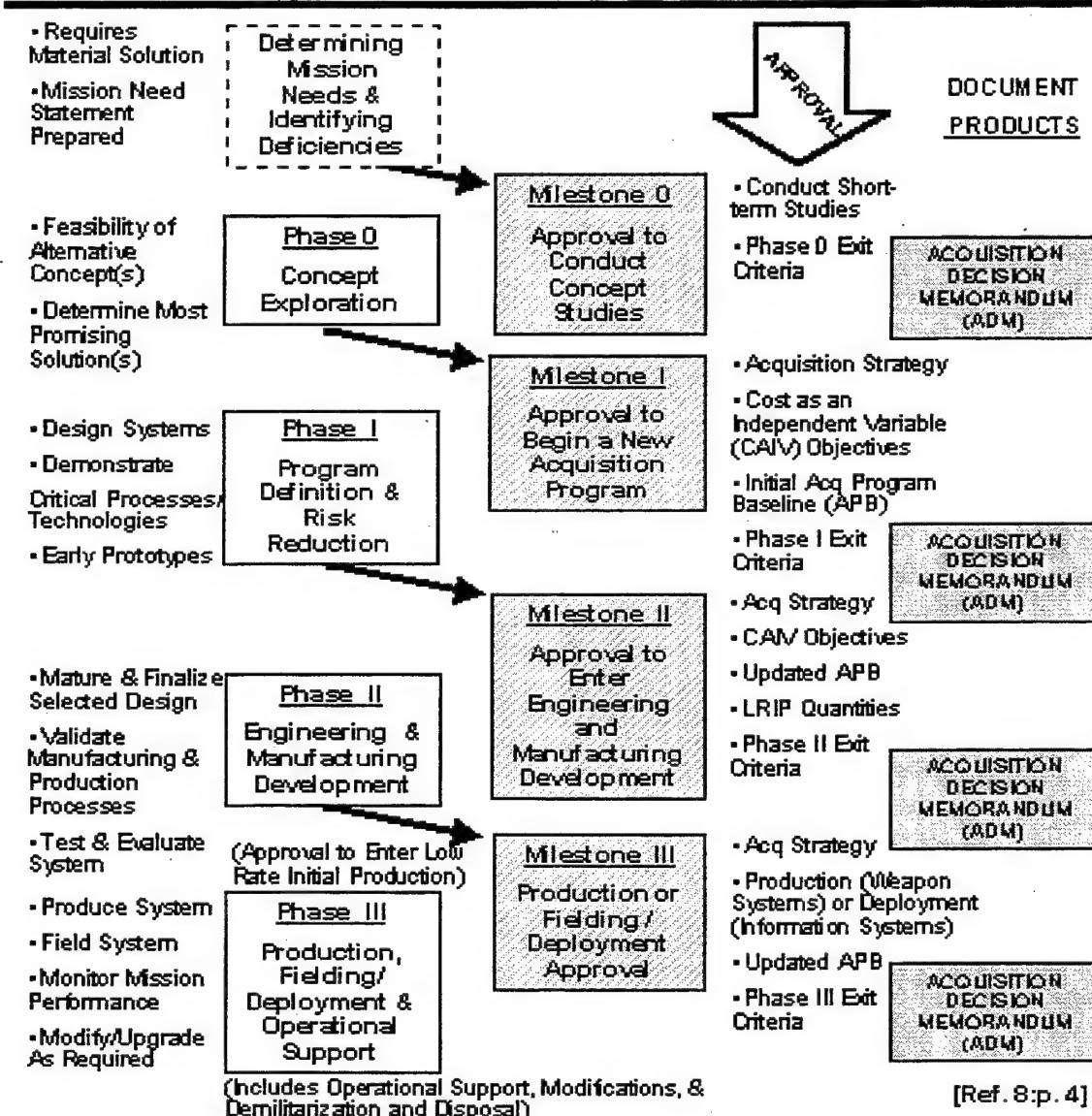
- Acquisition Strategy
- Cost as an Independent Variable (CAIV) objectives
- Acquisition Program Baseline
- Phase Exit Criteria [Ref. 46:part 1 p. 6]

The elements of this process and the flow throughout the phases is illustrated in the "United States Acquisition Process Phases" Figure 8 located on the next page.

Unlike the FRG, the US management responsibility for defense acquisition programs is decentralized among the military services except when decisions are specifically retained by the SECDEF. Therefore, each service has systems commands (SYSCOM); responsible for acquiring major weapon systems, provide support to PEOs and PMs, and are decision authorities for assigned programs. [Ref. 47:p. 10] This acquisition process requires the respective commands to monitor and ensure the system appropriately transitions from conception to disposal.

Figure 8

## UNITED STATES ACQUISITION PROCESS PHASES



[Ref. 8:p. 4]

Unfortunately, Dr. Ganzler believes "there is still far too much autonomy in the systems we produce. We still want to design every weapon as a stand-alone entity. This obviously increases costs. But, far worse, it increases confusion on the battlefield and greatly reduces warfighting

effectiveness." [Ref. 49:p. 3] He insists that the US must instead, develop and deploy systems built from the ground up that have the ability to communicate and fight side-by-side in a joint and coalition environment. [Ref. 49:p. 3] In an effort to improve interoperability within the US forces and to reduce the procurement of redundant systems, the Joint Requirements Oversight Council (JROC) was established. The JROC, which is chaired by the Vice Chairman of the Joint Chiefs of Staff (VCJCS), conducts requirements analysis, validates mission needs and key performance parameters, and develops recommended joint priorities for those needs.

However, unlike the German acquisition approach, the US requires more involvement on the part of the Program Manager and the Defense Contract Management Command (DCMC) when it comes to monitoring and assessing the contractor's and subcontractors' progress throughout the process. The US is better able to provide this type of oversight because of the infrastructure it has established and maintained in the DCMC, which has regional and in-plant offices. However, significant down-sizing of the organization and the recent periodic deployment of its personnel to Bosnia have put pressure on DCMC's ability to maintain the level of oversight in which the US is accustomed.

When the US military requires commodities, commercial items, or less sophisticated materiel, there are other agencies, installations and regional procuring organizations that can assist the DoD in meeting these requirements. For daily consumables like food, office supplies, spare parts, and other items like uniforms, the DoD utilizes the services of other Government agencies like the Defense Logistics Agency (DLA) and the General Services Administration (GSA) to procure these items. For repair contracts and guarding and cleaning services, the installation and regional buying offices can solicit and award contracts. Finally, when a

DoD organization requires commercial items, the credit card has become the mechanism of choice since it enables the user to obtain the desired items quickly and significantly reduces the paperwork and time it would take to process the requirement through a buying office.

#### **D. SUMMARY**

This chapter provided an overview of the acquisition systems of the FRG and the US. A thorough understanding of the different procurement philosophies--centralized in the FRG and decentralized in the US are critical. The US's centralized approach to major systems acquisition increases flexibility and improves the positions of the user or the user's representative to influence the procurement. However, it is a very costly approach that requires multiple buying activities that specialize in the procurement of similar systems. The German approach retains the expertise for procuring systems in commodity areas--aircraft, ships, tanks--at the BWB and consolidates orders when appropriate. While this approach is less connected to the user, it can improve interoperability among the Services, process efficiency and cost reduction.

When looking at the US and German philosophies for procuring subsistence, consumables, and office supplies, the opposite occurs. The US conducts centralized purchases through DLA and GSA for many of these items, while the Germans procure most of these items locally through their decentralized (local) buying offices. [Ref. 26] Two other important elements in this chapter are: that the US has a major program determination process versus a monetary determination process like the FRG, and that while the acquisition systems are very similar the US phases are more elaborate than those of the FRG.

While this thesis does not explore the acquisition and budget process in detail, more research should be conducted to determine if there is quantifiable data to indicate whether one process is more efficient or effective. There is evidence that such an endeavor would show that the German approach requires less overhead, infrastructure and costs. On the other hand, the US may be procuring better systems because of the additional insight. However, one should understand the difficulty in comparing and evaluating the processes due to the complex political, cultural, and economic differences. These differences can significantly influence the inputs, internal processes, and the outputs associated with the procurement of goods and services. Specific variations that require consideration include--the size of the industrial base, the degree of legislative oversight, and the amount of funds allocated to defense. [Ref. 35:p. 6] Finally, the budget process and the authorization for spending public monies are the primary factors hindering comprehensive procurement agreements.

The next chapter discusses the acquisition strategy and planning phase of the procurement process. The chapter examines these three major areas: market research, acquisition planning, and the solicitation document. While the methodologies used in these areas are very similar, it quickly becomes obvious that the US has a very structured acquisition planning part in the process, but that the policies governing the execution of the process lend themselves to tailoring its implementation to the type of procurement. Regarding the market research and solicitation documents, the US and German process strive to achieve the same results. Although the two Governments use different terms to describe elements within these activities, they both want to

- ensure the capability exists or can be developed to meet the need

- determine the best approach to meet the Government's needs
- prepare a solicitation document that produces bids or proposals that appropriate and effectively address the needs and provide appropriately solutions at fair and reasonable prices.

## V. ACQUISITION STRATEGY AND PLANNING PHASE

Once a good or service is required and it cannot be fulfilled "in-house", the procurement process of the MoD and the DoD is activated. Since this process is complex and time intensive, it requires a cooperative team of experts from multiple disciplines to ensure its success. The members of these acquisition teams have designated roles and responsibilities that must be met to ensure successful procurement.

German acquisition strategy and planning is the responsibility of the Directorate General of Armaments and the BWB. The armaments division conducts program-related negotiations with the users and the potential providers to assess the technological, financial, and economic feasibility of proposed programs. If it is determined that the technological requirement can be achieved, budget estimates are prepared and submitted to the MoD's budget division. [Ref. 35:p. 53] The BWB uses the information obtained from the armaments division to develop a Planning Guideline that transitions from the goals to the planning phase of the process. [Ref. 9:p. 15]

In the US process, the Program Manager and Contracting Officer have the authority and responsibility for acquisition strategy and planning. The Program Manager is in charge of the execution of the program and the Contracting Officer has a fiduciary responsibility to ensure that all laws and regulations are complied with prior to signing the contract. The program manager and the contracting officer must be diligent and maintain attention to detail throughout the process. The effectiveness of the acquisition team is measured by its ability to satisfy the requirements of the customer, which is deeply embedded in the team's ability to comply with sound management policies and decisions. Dedication and professionalism, however, can only go so far; without a well thought out

and comprehensive plan, most procurement endeavors are destined to fail. Therefore, exchanges between the Government and industry are encouraged from the earliest identification of a requirement through receipt of proposals. This can identify and resolve concerns about the appropriate acquisition strategy, including proposed contract type, terms and conditions of the contract, and acquisition planning schedules. Some methods of conducting exchanges are:

- Industry or small business conference;
- Public hearing;
- One-on-one meetings with potential offerors;
- Presolicitation notices;
- Presolicitation or preproposal conferences;
- Draft Request for Proposal (RFP), which is used by the Government in negotiated procurements to communicate Government requirements to industry and solicit proposals from industry to those requirements;
- Requests for Information;
- Site visits; and
- Market research [Ref. 1:para 15.201]

#### **A. MARKET RESEARCH**

Market research, a key step in the acquisition strategy and planning phase, is the most significant starting point. Market research is the process of collecting and analyzing information about the entire market. This assessment is conducted to determine the most suitable approach to acquiring, distributing, and supporting the required supplies and

services. Personnel conducting the market research explore "the availability and suitability of existing commercial and non-developmental items prior to the commencement of a development effort."

[Ref. 46:part 3 p. 4] Consequently, market research should begin as early as possible and continue throughout the life of a program.

The German VOL/A stipulates that the contracting process will be executed on a competitive basis and the general principles of contract awarding considers:

- Competition related to technical, functional, and aesthetic aspects; design; serving; and consequential costs. [Ref. 2:p. 44]
- Principles of efficiency and economy. [Ref. 12:p. 8]
- Awarding contracts to only efficient and reliable companies with sufficient expertise and reasonable pricing. [Ref. 12:p. 8]
- Fair competition for all bidders, both domestic and foreign. They must be treated equitably. [Ref. 2:p. 44] [Ref. 12:p. 8]

Applying these principles, the BWB conducts exchanges with industry to obtain as much information as possible regarding the best approach for the procurement. This includes conducting market research to determine which of the three bidding methods (Public Competitive Bidding, Restricted Bidding, and Negotiated Bidding) is most appropriate. The elements considered in determining the appropriate bidding method are the item, intended service of the item (strategic implications), and an assessment of the reliability, experience, and responsiveness of the available contractors. [Ref. 2:p. 45]

Previously, the United States had many producers for most product types, but the recent consolidation has resulted in fewer, larger

potential offerors. This reduction in the number of producers has brought the US in line with the Federal Republic of Germany, which has between two and six prime producers for product types. [Ref. 35:p. 5] Consequently, the quality of the exchanges between the Government and industry must be more productive because there are less firms proposing solutions.

When conducting market research, the United States considers the same elements as the Germans and both countries use their findings to determine a solicitation approach. The US's solicitation methods of bidding are Sealed Bid and Competitive Proposals. The German Public Competitive Bidding and Restricted Bidding structures can be best compared with the Sealed Bid method, and the Negotiated or Non-Competitive Bidding is comparable with the Competitive Proposal method. [Ref. 26]

FAR Part 10 outlines requires for contracting officers to conduct market research:

- "Before developing new requirements documents for an acquisition by that agency;
- Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold; and
- Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost." [Ref. 1:para 10, p. 1]

The extent of the market research varies depending on past experience, the urgency of the requirement, the complexity of the proposed acquisition, and the value of the good or service being procured. The types of data collected include:

- Requirements of any laws and regulations specific to the supplies or services being acquired;
- Availability of a suitable commercial item or one that with minor modification will meet the need;
- Extent to which commercial items or nondevelopmental items could be incorporated at the component level;
- The availability of items containing recovered materials and items that are energy efficient. [Ref. 1:para 10.001]

The market research results can be used to:

- "Determine if sources capable of satisfying the agency's requirements exist;
- Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that -
  - Meet the agency's requirements;
  - Could be modified to meet the agency's requirements; or
  - Could meet the agency's requirements if those requirements were modified to a reasonable extent;
- Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;
- Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as terms for warranties, buyer financing, maintenance and packaging, and marking; and

- Ensure maximum practicable use of recovered materials (see Subpart 23.4) and promote energy conservation and efficiency." [Ref. 1:para 10]

## **B. ACQUISITION PLANNING**

Generally, under the US acquisition system, once a military service determines that a good or service is required, that service has the authority and responsibility to contract for the required good or service. After being appointed by the MDA, the program manager of the project is responsible for developing a comprehensive and detailed acquisition strategy, acquisition plan, and source selection plan, which are reviewed by the Contracting Officer. While the Source Selection Authority (SSA) always approves the acquisition strategy, the approval authority of the acquisition plan and source selection plan may be delegated to a lower level. These documents are the basis of the acquisition process. Their quality and compliance will significantly impact the effectiveness of the procurement of quality products and services and the avoidance of protests. [Ref. 1:para 15.303]

### **1. Acquisition Strategy**

Acquisition strategy is the conceptual framework for the acquisition of goods and services. The development of the acquisition strategy examines the broad concepts and objectives which direct and control the overall development, production, fielding, and disposal of a good and the execution of a service. Therefore, the acquisition strategy should be tailored to meet the needs of a specific program and should evolve through an iterative process, becoming better defined as uncertainty is reduced. The essential elements that should be examined "include, but are not

limited to sources, risk management, cost as an independent variable, contract approach, management approach, environmental considerations, and source of support." [Ref. 46:part 3 p. 4]

Unlike the US system, the BWB decides, which contract type it will utilize during the acquisition strategy and planning phase. Until a few years ago, the BWB had only firm fixed-price and cost-plus contracts types at their disposal. [Ref. 17:p. 59] The Ministry of Defense expanded this to include Fixed Price with Economic Price Adjustment (FPE), Fixed Price Incentive Target Fee (FPIF), Cost Plus Incentive Fee (CPIF), and Cost Reimbursement (CR) type contracts. [Ref. 27] This has dramatically increased the flexibility of the contracting officer to develop better contracts, which consider risk, incentives, motivation, subcontractor work, duration of the contract, and complexity of the item and/or the process involved. The US contracting system utilizes many more contract types in addition to the German types cited previously. These additional contract types include: Fixed Price Award Fee (FPAF), Fixed Price with Prospective Price Redetermination (FPRP), Fixed Price with Retroactive Price Redetermination (FPRR), Firm Fixed Price Level of Effort (LOE), Cost Plus Award Fee (CPAF), Cost Plus Fixed Fee (CPFF), Time and Materials/Labor Hours (T&M), Cost Reimbursement (CR), and Cost Sharing (CS) contracts. [Ref. 1:para 16]

Additionally, the American system reserves the right to determine the contract type used for competitive proposals as late as the negotiation phase of the process. This gives the American contracting officer even greater flexibility than the German contracting officer. It also provides the contractor with an opportunity to become more involved in the process, and provides the offeror a greater sense of ownership in the contract.

## **2. Acquisition Plan**

An acquisition plan serves as the basis for initiating the individual contracting actions necessary to acquire a good or service, ensuring the procurement strategy addresses acquisition objectives and provides a logical and systematic approach for meeting a Government need. The acquisition plan is prepared through the team effort of requirements, logistics, technical, fiscal, legal, and contracting personnel. It should be a stand alone document and should provide sufficient information so that someone unfamiliar with the program is capable of understanding what is being proposed. Consequently, the plan should include: acquisition background, conditions, and objectives; business, management, and technical factors; trade-offs; risks; decision milestones; and "a plan of action addressing the sources for the acquisition, competition feasibility, and all other contracting questions." [Ref. 42:p. 1]

## **3. Source Selection Plan**

The goal of the source selection process is to maximize competition; minimize the complexity of the solicitation, evaluation, and selection decision; ensure impartial and comprehensive evaluation of proposals; and ensure selection of the source whose proposal is the most realistic and whose performance is expected to best meet the requirements.

[Ref. 1:para 15.3] The source selection plan is a blueprint for ensuring that the source selection goals are achieved. The source selection plan is normally divided into two sections. The first section of the source selection plan articulates the solicitation preparation and review, the organization to be used in the evaluation of the proposals, the members of the organization, and the responsibilities of the organization.

[Ref. 41:p. 6] The significant members are aligned as follows--the Source Selection Evaluation Board (SSEB), Source Selection Advisory Council

(SSAC), and SSA (who is the contracting officer unless otherwise appointed). [Ref. 1:para 15.303] These groups and the SSA have designated duties and responsibilities that improve the acquisition process and ensure its integrity. The evaluation phase of the process located in Chapter VII will elaborate on their respective roles in the process.

The SSEB is composed of officials with expertise in the technical aspects (design, engineering, and production), cost and/or price estimates, legal requirements, logistics requirements, and user needs. Traditionally, the program manager is a member of the SSEB. The contracting officer may serve as a member of the SSEB, the SSAC and the cost/price team unless designated as the SSA. The BWB's procurement process has evaluation groups, similar to the American SSEB, which conduct evaluations of the Restricted and Negotiated bids. While the US system requires that the board contain the Contracting Officer, Price Analyst, Technical Expert, Logistics Representatives, and a Legal Representative, the German system does not require a Legal Representative.

[Ref. 1:para 15.303] [Ref. 26] However, the German team can include a Legal Representative, Program Manager, Logistics Representative, and a User Representative just as the American system often does. [Ref. 27]

The second section of the source selection plan identifies the method for executing the source selection procedures, including: evaluation criteria, proposal evaluation, scoring methodology, source selection, and contract award, as well as information for protecting disclosure from personnel that are not members of the organization.

[Ref. 41:p. 6]

With regard to the evaluation criteria that is used to evaluate the proposal, both the United States and German systems require the development of the evaluation criteria before the solicitation document is presented to the contractor. The evaluation criteria varies from project

to project under both contracting systems, but the most likely criteria used include cost, quality (technical capability, company management and experience), past performance, logistics support, subcontractor management, the contractor's accounting system, WBS, and Government furnished equipment requirements. [Ref. 1:para 15.304] [Ref. 27] The first three criteria are required under the US system, and the last criteria does not pertain to the German system. In both countries, the criteria are established in the acquisition strategy and planning phase and are contained in the solicitation document. This ensures that all contractors know the ground rules within which they are operating. The US procedures go as far as requiring the solicitation to state "whether all evaluation factors other than cost or price, when combined are:

- Significantly more important than cost or price;
- Approximately equal to cost or price; or
- Significantly less important than cost or price."

[Ref. 1:para 15.304]

Additionally, the evaluation factors used in both countries must not be presented in a manner which unnecessarily eliminates competitors that can deliver a similar product with equal performance. In the past, procurement officials in the US and FRG set specifications in such a way that only selected firms could compete for the contract. For example, this occurred in the FRG when contract standards were established that ensured only two shoe companies, Puma and Adidas, could compete. [Ref. 37]

Determination of an appropriate scoring mechanism and procedures for implementing that mechanism in the evaluation phase must be addressed in the source selection plan. A well thought out and fair plan could be

critical to the Government's case if there are protests from unsuccessful offerors. Some of the scoring mechanisms used in the United States are objective (Outstanding, Excellent, Good), color coding (Green, Amber, Red, Black), ordinal (1,2,3,4), and numerical weighting ( $X_1$  times .5 +  $X_2$  times .25 +  $X_3$  times .15 +  $X_4$  times .1) mechanisms). [Ref. 3:p. 141] Germany only establishes and uses a scoring mechanism for evaluating the proposals for major systems. [Ref. 27]

Finally, the source selection plan outlines the strategy for securing the appropriate qualified personnel to serve in the source selection organization, as well as identifies the process that will be used, and assigns duties and responsibilities to the selected individuals. The members of the organization are then trained (indoctrinated), and observed to ensure they are performing to standard. The major training objectives include:

- Ensuring familiarity with the Acquisition Plan, Source Selection Plan, RFP and any other related materials the SSA requires review of prior to receipt of the proposals and beginning the evaluations.
- Documenting and preparing well written complete, coherent, and fully supported narratives justifying their findings and conclusions (Reports Development).
- Understanding the importance of absolute security throughout the selection process, including the actions of all personnel associated with the evaluation and administration of proposals, the deliberation of boards, and presentations to higher authority.

- Understanding how to implement the security plan through indoctrination of personnel, the location and security of the work area, communications procedures, documentation control unauthorized disclosure, and financial interest.

[Ref. 41:Ch. 5 p. 2]

When deficiencies are identified in the evaluation phase of the contracting process, retraining is conducted to improve performance.

#### C. SOLICITATION DOCUMENT

Under the German system, preparation of the solicitation document begins upon completion of the market research and after choosing the appropriate bidding method and contract type. Obviously, when the requirement is well defined, the Germans will use the competitive bidding or restricted method, but for other situations, the negotiated method will be used. The US system uses a similar approach, publishing an Invitation For Bid (IFB) for well-defined requirements and the RFP for others. These procedures result in contractors providing a sealed bid or a competitive proposal for the respective solicitation methods.

This study is interested in requirements for pursuing the negotiated bidding and competitive proposal methods. The solicitation document for both countries includes at a minimum the following:

- Specifications, which are performance based
- Statement of Objectives (SOO) and Statement of Work (SOW)

- Disclosure all significant factors and sub-factors, both price and non-price, and the relative importance of combined technical factors, price, and past performance
- Offer due date
- Applicable certifications and representations
- Address quantity, description, and required delivery for the item
- Terms and conditions [Ref. 3:p. 62] [Ref. 27]

In addition to the items above, the US solicitation documents will include:

- RFP or IFB number and date
- Name and address of the contracting office
- Type of contract anticipated
- Contract Data Requirements List (CDRL)
- Cost and pricing data requirements for competitive proposals that are anticipated to be over \$500,000 or have anticipated modifications in excess of \$500,000. Exceptions to this are awards made where there is adequate price competition, based on catalog or market prices, having legislated or regulated prices, and for commercial items [Ref. 1:para 15.403]

US officials should also consider including the following:

- Requiring offerors to present oral proposals in addition to and/or lieu of written proposals
- Requiring offerors to provide oral presentations [Ref. 1:para 15.102]

- Including a clause "the Government intends to award a contract without discussions." [Ref. 1:para 52.215 (f)(4)] The intent of this clause is to compel the offerors to submit an initial proposal with the offeror's best cost or price and technical offer. This can be advantageous since it keeps contractors honest by making them submit good proposals up front.

The German system does not have provisions for either oral proposals or presentations, even though these are effective methods for contractors to present their proposals and interact with the evaluation members. Although the intent is not to award the contract to the organization with the best briefing, it does provide an opportunity for discussion which can clarify any misunderstandings or misinterpretations. It can also be effective in streamlining the process. [Ref. 1:para 15.102] The German system does require the following in addition to the other elements above:

- Develop and update cost estimates. The BWB and other agencies continually review these estimates throughout the acquisition process for accuracy. [Ref. 7:p. 53]
- Expiration timeline for awarding the contract [Ref. 26]

The German SOW requirement is outlined in the VOL/A. In the case of the Production Phase and some Developmental Phase contracts, the performance requirements are fixed relative to a "constructional" statement of work so that the bidder only has to add his price. [Ref. 7:p. 57] [Ref. 19:p. 229] These bids are assessed on best price considerations alone. [Ref. 12:p. 31] Conversely, Pre-Phase, Definition Phase and most Developmental Phase contracts use a "functional" statement

of work to outline the purpose, function, and other special requirements of the program. [Ref. 12:p. 14] The functional statement of work allows contractors to offer adequate supplies and services in their particular variant, including technical innovation to satisfy the requirement.

[Ref. 6:p. 57] To ensure that all competitors have an understanding of the desired supplies and services, the BWB requires that the requirements be identified clearly and exhaustively through a detailed statement of work. [Ref. 6:p. 8] Additionally, the solicitation document will also contain the necessary technical specifications. [Ref. 17:p. 58]

Periodically, Negotiated Bidding or in sole source situation, the German BWB will send out a draft solicitation document to the perspective firms to examine and comments, similar to the American practice. In rare situations, the Germans may hold presolicitation conferences with industry. Presolicitation conferences are conducted to discuss the draft tender document and obtain comments from contractors on the document, as well as to offer a time for explanations and clarifications. This procedure is often conducted in the US with the draft Request for Proposal (RFP).

#### **D. SUMMARY**

This chapter addressed three elements of acquisition strategy and planning phase--market research, acquisition planning, and the solicitation document. US and German procurement officials are required to conduct effective market research before proceeding with an acquisition. The information obtain through the market research efforts assists the procuring organizations in the development of their acquisition strategy, acquisition plan, and source selection plan. The

market research will also have a significant impact in determining the appropriate solicitation document to develop.

Evidence indicates that the US acquisition planning part of the process has a very structured outline that procurement officials must follow. This structure has most likely been developed over time to template the process and to contend with protests from unsuccessful offerors--an area that will be addressed in greater detail in later chapters. This structured acquisition planning process does, however, provide the acquisition professional with the tools to tailor his or her approach to determine the "best value" and method of contract for the contractor and the Government. The flexibility in this process includes the use of oral presentations and oral proposals and the practice of determining the type of contract for the procurement later in the process. All of these approaches are commercial in nature and foster teaming, partnering and cooperation. However, both countries have policies requiring certified cost and pricing data which can quickly sour the prospects of the contract.

Discussion in Chapter VI concentrates on bidding process determination, advertising the solicitation, issuing the solicitation document, solicitation document requirements, and the submission of offers. The complexity and type of procurement facing German officials requires an examination of their three bidding processes and three methods of advertising. Conversely, the US has two bidding processes and one advertising requirement that Government officials must consider.

Understanding the US and German bidding methods by name and process and how they compare to one another is critical because they will be referred to repeatedly. Regarding the advertising and solicitation document requirements portion of the chapter, it is important to recall the "National" and "International" procedures addressed in Chapter 4 B. 1.

because the appropriate procedures used are dependent on the type of procurement.



## VI. SOLICITATION PROCESS PHASE

### A. BIDDING METHODS

German's first bidding method, Public Competitive Bidding, best represents the BWB's objectives because it encourages the most competition and thus provides the most economically advantageous situation for the Government. Although this method strives to ensure comparability of the offers, it is understood that the proposals containing well defined requirements and those which contain a "constructive" statement of work will be more comparable than those that have less defined requirements. This method is most often used for mature items where cost will be the determining factor. In fact, the only time that cost and pricing data is not required to be submitted to the BWB is when the contract price is set at the market rate. [Ref. 37] Under the German system, the performance of the contract is fixed as a matter of principle by the statement of work and the offeror merely needs to add his price. This process ensures the compatibility of the offers. [Ref. 19:p. 229] The received unopened offers shall be confirmed on the envelope, and the offer shall be kept in safe custody until the date of opening. [Ref 6:p. 24]

The Public Competitive Bidding method is very similar to the US's Sealed Bid method. The Public Bidding Method, which is best used for well-defined requirements, hopes to receive maximum number of offerors, requires the use of an IFB, and discussions rarely occur. Under these circumstances, the selection of the lowest price technically acceptable source is appropriate given that the offeror is also found to be responsible. "When using the lowest price technically acceptable process, the following apply:

- ... Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors...
- Trade-off are not permitted
- Proposals are evaluated for acceptability but not ranked using the non-cost/price factors
- Exchanges may occur (see 15.306)." [Ref. 1:para 15.101-2]

If there are high quality demands, if the needed supplies and services can only be provided by a limited number of contractors due to their nature and scope, or for other reasons specified in the VOL/A, then Public Competitive Bidding can be excluded and the Restricted Bidding procedures will apply. [Ref. 6:p. 3] In these situations, a select number of contractors are chosen under a formal procedure to submit bids.

[Ref. 2:p. 45] In these situations, at least three bidders are invited to submit proposals; the contracting authority should alternate between offerors; small and medium businesses will be allowed to participate.

[Ref. 6:p. 7]

To assist the BWB in the identification of potential offerors, the Auftragsberatungsstelle des Bundesländes (Contact Advisory Agencies (CAA) of the States) conducts market research for public customers during the acquisition planning phase of the contracting process. The BWB tells the CAA how many contractors should be named. The BWB also identifies the specific requirements that the contractors must meet. [Ref. 6:p. 5] The CAA reviews its records of register contractors and conducts additional market research to identify potential offerors. The CAA contacts the firms before providing the company's name to the BWB to ensure the firm is prepared to submit a bid. [Ref. 6:p. 55] The CAA then identifies the

potential offerors to the BWB. The CAA also indicates in its notice any additional capable contractors. Normally, the BWB nominates qualified firms to bid to the MoD. The nominees, approved by the MoD with the agreement of the Ministry of Economics, are then requested to submit offerors. [Ref. 17:p. 59] After one company is selected as the only potential contractor and negotiations are conducted, the contract is awarded on a non-competitive basis. [Ref. 2:p. 45]

The last of the German bidding methods, Negotiating Bidding (non-competitive), is used in sole-source situations, when there are extremely few competitors, in cases of minor follow-on, or in cases of urgency and secrecy. These situations are normally for large or complex procurements like aircraft, missiles, and tanks. [Ref. 12:p. 10] [Ref. 21]

Circumstances that allow the BWB to use the non-competitive procedures for "hard" defense and below the threshold levels for "nonhard" items are:

- There is only one company to consider for an item, because of reasons such as reliability, experience, special methods of production or execution (grounds for sole source);
- For follow-on research and development contracts, awards must be granted to companies involved in the research and development contracts within an appropriate period and to an appropriate amount (contract value), provided this does not cause a decrease in the standard of competition;
- When intellectual property rights can be exploited by the contracting authority or other companies;
- For minor follow-on orders connected with a current contract when it is not expected that advertising procedures will produce

significant savings. However the follow-on contract shall not exceed 20% of the current contract value;

- The supplies required are spare-parts and additional parts of current contract items involving machines and related equipment and appropriate spare parts cannot be acquired from other companies or cannot be acquired from other companies under economic circumstances;
- Urgency for a supply or service, but it is interpreted in the most narrow consideration;
- For reasons of secrecy;
- Special creative talents, but is often ambiguous and subject to abuse;
- After a cancellation of a public or restricted advertising and it is determined that starting either procedure again will not be economically advantageous. [Ref. 19:p. 231]

When procuring items in excess of the threshold levels, the BWB may use negotiated procedures, which comply with the EC Directives. Grounds authorizing the use of these procedures are:

- In the absence of responses to open or restricted procedures when the terms of the original request are not substantially altered and provided that a report is communicated to the EC;
- When the products involved are manufactured purely for the purpose of research, experiment, study, or development. This situation does not extend to production cycles or to recover research and development costs;

- When for technical or artistic reasons, or for reasons of extreme urgency which were unforeseen by the contracting authority, the time limit laid down for the open, restricted, or negotiated procedures cannot be kept;
- For additional deliveries by the original supplier, which are intended as either a partial replacement of normal supplies or as the extension of existing supplies where a change of supplier would obligate the contracting authority to acquire material with different technical characteristics which would result in a incompatibility or disproportionate technical difficulties in operations and maintenance. [Ref. 19:p. 233]

Currently, the negotiated bidding method is used most often for large defense procurements. However, EC public procurement law is trending towards a freer use of the restricted bidding procedure.

[Ref. 19:p. 231]

If appropriate, a public invitation for participation (competitive bidding) should precede the restricted bidding and negotiated contracting. [Ref. 2:p. 45] In the event that there is no response or a limited response, the solicitation will be classified as a sole-source situation, thus requiring the use of restricted bidding or negotiated bidding. In cases where the contract value exceeds 10,000 DM (\$5,700 US), the liaison office of the MoE at the BWB will nominate qualified firms in coordination with the respective CAA. [Ref. 9:p. 14] [Ref. 6:p. 5] Involving the MoE and the CAA achieves the following objectives:

- Absolute neutrality in the selection of bidders and thus fair and equal treatment of all bidders

- Taking into account regional economic condition
- Even distribution of orders

The US's competitive proposal bidding procedure is used for the acquisition of goods and services when there is a less definitive requirement. Often times, more developmental work is required and greater consideration must be given to performance risk, technical approaches, and past performance. This procedure permits the Government to have industry develop conceptual or actual solutions to the problems and present them in the form of proposals before funds are committed to the acquisition.

[Ref. 1:para 15.101] Acquisition personnel can then conduct trade-off assessments to determine the proposal that provides the "best value" to the Government.

## **B. ADVERTISING**

Under the US and German systems, once the solicitation document is developed, companies must review various publications for listings of solicitations. As far as the German government is concerned, the type of advertising used depends on the regulations governing the procurement of "National", "International" EC, or "International" WEAG products and services. For "National" procurements of "nonhard" ("dual-use") and "hard" defense material below the EC and WEAG thresholds, the Bundesausschreibungsblatt (Federal Trade Gazette) is the publication containing contracting opportunities. The Bundesausschreibungsblatt is analogous to the United States' Commerce Business Daily (CBD).

[Ref. 5:p. 10] The CBD contains the synopsis for solicitations at least 15 days before the contracting officer releases the solicitation to

vendors for contracts expected to exceed \$100,000. [Ref. 1:para 5.203] [Ref. 3:p. 33]. For contracting based on the "International" procedures, the synopsis will also be placed in either the Supplement to the Official Journal of the European Communities or the WEAG Bulletin depending on the type of desired good. The "nonhard" defense tenders for goods and services for anticipated contracts in excess of 137,537 EC or 262,118 DM [\$147,257 (US)] and that comply with the GATT and EU are listed in the Supplement to the Official Journal of the European Communities.

[Ref. 4:p. 6] These advertisements must comply with the following EC specifications:

- A specific format located in an annex of the VOL/A;
- Its length must not exceed approximately 650 words;
- It will be published within 12 days after receipt (9 days in Germany) and will be published free of charge. [Ref. 40:p. 17]

[Ref. 6:p. 41]

While the BWB solicits tenders in the Bundesausschreibungsblatt at the same time they are listed in the Supplement to the Official Journal of the European Communities, the advertisements must not be published in any official gazettes, newspapers, and periodicals before the identified mailing date for the international publication. [Ref. 4:p. 7]

[Ref. 6:p. 41] However, in case of an emergency, the advertisement will be published in all issues of the Official Gazette of the European Communities within five days after mailing, but only in the original language. [Ref. 6:p. 41]

For "hard" defense contracts in excess of 1M European Currency Units (ECU), which is approximately, 2M DM [\$1.3M (US)], the tenders are listed

in the WEAG Bulletin. [Ref. 4:p. 7] [Ref. 12:p. 16] While the EDEM requirement is not legally binding, each WEAG member country does publish its own version of the WEAG Bulletin, which are directed to be published in one of the two official languages of the WEAG--English and French. In Germany, the monthly publication is called the Bulletin--Informationblatt über Beschaffungen der Bundeswehr (Information Gazette about Bundeswehr Procurement), but currently, Germany does not comply with the language procedures and publishes its version of the bulletin in German.

[Ref. 12:p. 23] The bulletins provide information in six articles about

- Intended contracting
- Requests for bids issued
- Awarding of single-source orders
- Contract award after receipt of competitive offers
- Subsequent information
- Opportunities for subcontractor work [Ref. 2:p. 47]

Therefore, it is recommended that contractors subscribe to multiple WEAG Bulletins because they can submit proposals in any country regardless of whether the proposing firm is in a nation that is a member of the WEAG. The contractors must remember that the solicitations are only advertised in the bulletin once. [Ref. 37]

There have been discussions about centralizing the publication of a WEAG Bulletin, but the United Kingdom and France do not want to lose control of publication to an independent firm. Currently, information is sometimes deleted from the publication upon each country's discretion, and there is no governing body to regulate the bulletins. [Ref. 37] In addition to issuing the information regarding procurements in the WEAG

Bulletin, the member nations are obligated to pursue the most economic solution as the fundamental criteria for awarding contracts and to promote cross-border competition within the WEAG. [Ref. 19:p. 241]

Additionally, the BWB does not maintain a bidders or solicitation mailing list like those used by the DoD. [Ref. 3:p.43] [Ref. 17:p. 58] Finally, the Germans do not have a central repository with military specifications or technical documents. [Ref. 17:p. 58] Similarly, the US, under the direction of the previous SECDEF William Perry, eliminated over 31,000 military specifications and standards. [Ref. 36:p. 2] SECDEF Perry took this action to reduce the burden on contractors in the hopes of eliminating the inflated prices paid for almost every defense item, from jet fighters to food for mess facilities. Therefore, Perry's directive requires the components to acquire as many products and services from the commercial marketplace, and if a service determines that a good or service requires a specific standards and specifications, then they can request to have a specification or standard instated.

#### **C. SOLICITATION DOCUMENT REQUIREMENTS**

Upon request, the procurement agencies of both countries forward copies of solicitation documents to all perspective bidders.

[Ref. 12:p. 14] The VOL/A requires that contractors are given sufficient time to submit their bids by the due date for "National" procurement procedures, ensuring a minimum of 30 days but normally no more than 60 days. The upper end of the time in which the BWB accepts proposals is not governed by regulations, but it is listed in the solicitation document.

[Ref. 26] In the US, contractors, normally, have a minimum of 30 days to submit proposals for commercial products and 45 days for R&D projects, and the maximum time limit will be cited in the solicitation document.

However, "for acquisitions subject to NAFTA or the Trade Agreements Act (see Subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers shall be no less than 40 days."

[Ref. 1:para 5.203]

Under GATT regulations, the deadline for receipt of tenders must be at least 40 days from the date of the notice in the Supplement to the Official Journal of the European Communities. Foreign suppliers often find themselves under considerable constraints when trying to meet the deadline. [Ref. 4:p. 7] Therefore, EU directives require that when using competitive bidding procedures, the time allocated for submitting offers will be at least 52 calendar days from the date of the advertisement listed. [Ref. 4:p. 10] [Ref. 6:p. 44] [Ref. 40:p. 17] This action meets the GATT requirements and increases competition. When restrictive and noncompetitive bidding are used, the bid submission period will be at least 37 calendar days under normal conditions and can be as few as 15 calendar days in cases of urgency. [Ref. 6:p. 45] [Ref. 40:p. 21] For "hard" defense materiels in excess of the WEAG threshold, the deadline for receipt of offers is 90 days under normal conditions and 30 days when urgency justifies the change. [Ref. 37]

#### **D. SUBMISSION OF AN OFFER**

While the US system encourages electronic submission and permits hand delivered, mailed, and faxed proposals, the Germany system requires that all bids be mailed in a closed and specially marked envelope. [Ref. 1:para 15.203] Unlike the US which permits review of proposals as they are submitted, the BWB keeps all bids unopened until the due date. [Ref. 12:p. 14] While the FRG system is more secretive, it is less convenient and more time consuming than the US system. Given the

technological advancements available, Germany should consider liberalizing their process in pursuit of efficiency. Permitting offers to be submitted via fax would make excellent use of a predominant utilized technology.

#### **E. SUMMARY**

This chapter outlined the solicitation process. While the Public Competitive Bidding and Sealed Bid methods are similar in methodology and practice, the Restricted, Negotiating, and RFP are similar only in methodology. In practice, the German procedures permit the use of invitations only for Restricted and Negotiating Bidding. Germany implements these methods under its "National" system, but the practice is unacceptable when "International" procedures are required.

The CAA provides services to the buying organization that are similar to those provided by the US's Small Business Administration (SBA). The CAA continually updates their records of the registered German companies who are available and capable of competing for and performing Government contracts. The CAA also monitors production programs, quantifies capabilities, and maintains past performance information. [Ref. 2:p. 46] While the BWB can also solicit the services of the CAA for major system purchases, the US buying and systems commands must rely on their own files, conduct market research, and wait for an effective past performance tracking system to be implemented. The CAAs can also provide information to contractors regarding potential subcontractors upon request. [Ref. 2:p. 46]

Unlike the Americans, the Germans have varying requirements for advertising and submission of offerors. This advertising process increases Government and contractor costs because of publication, coordination, monitoring, subscription, and supervision. Given Germany's

centralized procurement policy, many of these costs are spread over a larger base thus lowering the overall overhead rates. If each buying office and systems command in the US had to add these additional duties, the costs would be significant because of manpower and infrastructure increases. Perhaps more uniform publication mechanisms and timelines should be established to reduce workloads and clarify misunderstandings.

Chapter VII discusses the treatment of offerors evaluation of offers, immediate movement to contract award or the use of exchanges, development of a competitive range, and cancellation procedures.

## VII. SOURCE EVALUATION PHASE

In the US, once the proposals are received, opened, and reviewed for completeness, they are broken down and disseminated to the respective experts who only see and evaluate the narrow part of each proposal, which pertains to their area of expertise. This ensures that the level of work required is not more than one individual can effectively handle, and ensures that the individual conducting the assessment can best judge the respective areas. The second major group involved in the source selection process is the SSAC, which is composed of high-level acquisition professionals who oversee the SSEB. These members are often appointed by the SSA, who has the overall responsibility for ensuring the acquisition approach is sound and that the integrity of the process is maintained. The leaders of the source evaluation teams must motivate the other members, manage the dynamics of the process, and provide leadership. They must also create a vision, inspire commitment, state performance objectives, answer questions, explain why the products and services and the sanctity of the selection process is so important, direct efforts toward a common purpose, and encourage hard work and enthusiasm of their members. The results of successfully implemented leading function of management can ensure that the integrity of the procurement process is maintained and that the necessary products and service are procured for the user.

In Germany, domestic and foreign competitors are treated equally and joint ventures and joint competitors will be treated equally with individual bidders. [Ref. 6:p. 7] However, prisons, youth services institutions, training and advanced training centers will be prohibited from competing with industrial enterprises. [Ref. 6:p. 8] When using competitive bidding, awarding contracts shall not be limited to offerors

located in a specific area. [Ref. 6:p. 7] Generally, there is no pre-qualification process for prospective vendors in either country. If the BWB feels it is necessary to conduct an inquiry into the quality of a company, it goes to the State Procurement Counseling Offices located in each of the 16 Federal States. [Ref. 17:p. 58] Some of the criteria for rejecting contractors in the FRG are:

- Bankrupt or insolvent
- Company is in the state of liquidation
- Acts of grave misconduct rendering the bidder's reliability in doubt
- Failure to pay taxes or social contributions
- Bidder has intentionally made unfounded declarations regarding skills, capacity, and reliability [Ref. 29:p. 8]

Similarly in the US, offers can be rejected when the contractor is insolvent or the submitted document is incomplete. These offerors may be briefed which explain why their bid was rejected without consideration of the proposal.

#### **A. EVALUATION OF OFFERS**

The next step in the BWB's process includes evaluation of the contractors who were considered qualified to bid. The proposals of these offerors will be examined to determine if they are subject to exclusion from competition because the bids:

- Do not contain price quotations and required information and statements are missing. [Ref. 29:p. 27]
- Are not signed legally binding. Any changes made by the bidder must be clear and reliable.
- Contain changes and additions in the purchasing documents.
- Were received late, except when the late submission was outside the responsibility of offeror. However, these bids may be taken into consideration if it is proven that the delay was beyond the bidder's control. [Ref. 29:p.26]
- Are missing important price information.
- Have a price that is disproportionate to the item.

[Ref. 12:p. 30]

Under both government systems, the contractor submitting the proposal has the right to know when he or she failed to include any necessary element in the proposal or when any part of the proposal requires clarification. Additionally, under the German system, the contracting officer will notify the offeror after the proposal has been submitted and when there is no further communications regarding the proposal process. [Ref. 13:p. 83] However, if a firm forgets a document and the BWB procurement officer wants more competition he or she does not have to exclude the firm. He can inform the company that they have additional time to submit the missing document, but it must be before contract award. [Ref. 37]

Once the criteria above is met, the BWB will only conduct an evaluation of bids:

- Where the bidders have the necessary technical know-how, capabilities and reliability to meet the contractual requirements. [Ref. 29:p. 28]
- Which have proper performance objectives and include an adequate warranty.
- Where contract-related circumstances are decisive.  
[Ref. 12:p. 30]

The bids will be examined for completeness, correct calculations and validity. Additionally, all significant aspects will be recorded for the evaluation of profitability of the bids and if necessary, experts will be consulted. [Ref. 6:p.26]

Profit is also an important consideration. Obviously, the level of profit made by a contractor under German and US procedures for a fixed price contract is determined by contractor's ability to control costs. However under the US system, the contracting officer must negotiate a price and fee for cost type contracts that meet the following guidelines:

- "For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contractor's cost, excluding fee
- For architect-engineer services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

- For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contractor's estimated cost, excluding fee." [Ref. 1:para 15.404-4]

In Germany, the allowable profit rate for negotiated bids is calculated by using the capital invested and frequency of the turnover in the defense material. Therefore, the profit rate allowed can be as low as 2.5% or as high as 11%. [Ref. 7:p. 52] [Ref. 35: 58]

When determining the most economic bid, the Germans consider the principle of economy and profitability. Therefore, the most economic offer is the one which possesses the most favorable relationship between the desired supplies and service and the offered price. The evaluation of the offer considers all circumstances related to the contract including technical, functional, creative, esthetic aspects; repair service, and follow-on costs. [Ref. 6:p. 61]

#### **B. MOVE TO CONTRACT AWARD OR EXCHANGES**

At this point, both countries have mechanisms in their system which permit the Government to award a contract to the proposal that is evaluated as the "best value" without conducting negotiations. This is the approach normally taken in Germany and can be taken if the US solicitation document states that the Government intends to evaluate and award without discussions. However, initial exchanges in the US, known as clarifications, may be pursued when award without discussions is contemplated to clarify certain aspects of proposals or resolve minor clerical errors before contract award. [Ref. 1:para 15.306] However, when US procurement officials intend on conducting negotiations in an effort to achieve a better price and/or a better product for the Government,

communications are conducted between the Government and offerors. This form of exchange leads to the establishment of a competitive range.

[Ref. 1:para 15.306 (b)]

Like the US, the Germans do not consider lowest price as the sole decisive factor for awarding the contracts. [Ref. 6:p. 28] Price is just one of the evaluation factors that will be considered. [Ref. 12:p. 12] When there is a price deviation between price and supply and services that is considerably different from pragmatic values usually found in competitive pricing, the BWB conducts further investigation to include all findings regarding the relationship between the price and performance of the good or service. [Ref. 6:p. 61] Additionally, if justified by the type of procurement, the BWB may require additional information from offerors to prove their skills, capacity, and reliability to perform the contract. Consequently, the BWB, like the US officials, must protect the firm's trade secrets. [Ref. 6:p. 7]

### **C. COMPETITIVE RANGE**

After all accepted proposals are entered into the competitive range, the other proposals with major deficiencies (material failure of a proposal to meet the Governments' requirements) or a combination of significant weaknesses (which makes it very doubtful that the contractor will succeed in the performance of the contract) are determined to be outside the competitive range. For offerors whose past performance information is preventing them from being in the competitive range, communications will be held to allow the contractor to respond. These communications can also be conducted to "improve the Government's understanding of proposals, allow reasonable interpretation of the proposal, or facilitate the Government's evaluation process."

[Ref. 1:para 15.306] However, these communications shall not be used to correct deficiencies or material omissions in the proposal or to alter the technical or cost elements of the proposal. Information obtained from the communications and the evaluation proposals against the evaluation criteria will establish the competitive range. The competitive range is based on the most highly rated proposals, "unless the range is further reduced for the purposes of efficiency." [Ref. 1:para 15.306]

The contractors whose proposals were excluded from the competitive range will be notified in writing of their exclusion. [Ref. 1:para 15.503] These unsuccessful offerors may then request a preaward debriefing by submitting a written request for a debriefing within 3 days after receipt of the notice of exclusion from the competition. The offeror may request a debriefing delay until after contract award in the hopes of obtaining more information. Additionally, when it is in the best interest of the Government, the contracting officer may delay the debriefings until a date not later than the time the post award debriefings are held.

[Ref. 1:para 15.505] Whether the debriefing is preaward or post award, the intent is to reduce the offeror's motivations for filing a protest through clarifying misunderstandings and identifying significant weaknesses in the proposal.

Normally, the contracting officer chairs the preaward debriefings which include:

- The agency's evaluation of the significant elements in the offeror's proposal;
- A summary of the rationale for eliminating the offeror from the competition; and
- Reasonable responses to relevant questions. [Ref. 1:15.505(e)]

However, the preaward debriefing shall not disclose -

- The number of offerors;
- The identity of other offerors;
- The content of other offerors proposals;
- The ranking of other offerors;
- The evaluation of other offerors; or [Ref. 1:para 15.505(3)(f)]
- A point-by-point comparison of debriefed proposals to include trade secrets and privileged or confidential information.  
[Ref. 1:para 15.506(e)]

The BWB also has the option of sending out a letter of intent to the particular offeror suggesting that it will likely be awarded the contract. In addition to the letter of intent, the BWB may also send an instruction to proceed with the work outlined in the RFP. Unfortunately, this policy and process causes two fundamental legal problems for the Germans. The first problem relates to the contractor's entitlement to compensation for work performed while anticipating the awarding of the contract. The second problem relates to the terms and conditions including technical performance associated with the work performed during the pre-award period. Obviously, both problems can be avoided if the offeror or the contractor fully understands the intent of the Government's instructions and is willing to properly comply with those same instructions.

[Ref. 13:p. 85] Full contract award will not occur until negotiations are conducted to fully definitize the proposed contract.

#### D. CANCELLATION PROCEDURES

Both US and German acquisition officials have cancellation procedures at their disposal. The VOL/A contains cancellation procedures for both IFBs and RFPs if:

- No bids were received that meet the RFP requirements;
- The basis of the IFB has considerably changed;
- Even the lowest price quotation is considered excessive;
- Other cogent reasons justify cancellation. [Ref. 6:p. 29]

Additionally, the IFB may be partially canceled if the dividing of the supplies and services in batches is planned or additional bids/change proposals are not excluded:

- If the lowest price quotation does not fully meet the supplies and services required;
- If there are strong reasons for not awarding the entire contract to one offeror. [Ref. 6:p. 29]

In the US, solicitations should not be canceled unless it is clearly necessary, in the public's interest, and accomplished in accordance with agency regulations. However, solicitations may be canceled for the following:

- The requirement no longer exists
- Funds are no longer available

A solicitation may be canceled and resolicited if the overall scope of the proposed contract has changed to the extent that the original synopsis and/or solicitation no longer validly describe the requirement.

[Ref. 1:para 14.209] However, cancellation procedures in both countries require that all bidders be notified of the cancellation and provided with the reasons for the cancellation. These reasons will also be contained in a memorandum of record for the cancellation of the invitation to bid.

[Ref. 1:para 14.404] [Ref. 6:p. 29]

#### **E. SUMMARY**

While reading this chapter, it should have become obvious that both countries have many mechanisms for eliminating unworthy offers. Germany and the US can motivate firms to submit their best offerors up front by reserving the right to award a contract without conducting negotiations. This can significantly reduce time and frustration for all parties involved. The US and the FRG also have procedures available to conduct exchanges with contractors for the purpose of clarifying issues and in the US, communications can be conducted to assist in determining the competitive range. It is also evident that the US has better embraced the philosophy of conducting debriefings as a mechanism for heading off potential protests and assisting unsuccessful offerors to better understand how they can improve the proposals in the future.

The next chapter addresses negotiation objectives, prenegotiation activities, negotiation sessions, contract development, post negotiation activities, and IFB considerations. This is a lengthy chapter but one that presents many differences in the way the US and Germany prepare for negotiations, develop the negotiation product, and who conduct the negotiations.

## VIII. NEGOTIATIONS PHASES

### A. NEGOTIATION OBJECTIVES

This phase of the contracting process is utilized more often in the US than in the FRG, but before getting into the specifics of the two systems, it is important to understand the intent of the process and its elements. Negotiation is defined as the process of communication between two parties, who have their own interests, viewpoints, concerns, and objectives. The negotiation process attempts to reach a "mutually satisfactory agreement" which best achieves each party's goals. From the Government's perspective, the primary objective of negotiations is to maximize the Government's ability to obtain the "best value".

[Ref. 1:para 15.306] Under the US system, this is achieved when the contracting officer and the offeror negotiate an acceptable fair and reasonable price for the good and service. This does not necessarily mean that the parties reached agreement on each cost element. Reasonable compromises may be necessary. This may lead to bargaining which includes persuasion, alteration of assumptions and positions and may apply to price, schedule, and technical requirements. [Ref. 1:para 15.306] This is necessary since detailed elements of proposals may be interpreted differently by the Government and contractor's specialists. It is important to understand that the counsel and recommendations of specialists, including auditors, are advisory only. Therefore, the contracting officer is responsible for exercising good judgement and is solely responsible for the final pricing decision. [Ref. 1:para 15.803]

The contracting officer's primary concern is the actual price the Government pays. The contract's eventual costs and profit or fee are of secondary concern. The contracting officer's objective is to negotiate

the type of contract and obtain a price which will provide the contractor with the greatest incentive for efficient and economical performance. The negotiation of a contract type and price are related and are entwined with the risk and uncertainty facing the Government and the contractor. The elements used to determine the best type of contract were discussed in Chapter V of this paper. For this reason, the contracting officer should not become preoccupied with any one element. He or she must balance the contract type, cost, and profit or fee negotiated to achieve a fair and reasonable price. [Ref. 1:para 15.803]

Prior to determining which BWB sections will handle the technical analysis, price analysis and negotiations, careful consideration is given to the type of procurement, risks associated with the project, and the capability of the contractor. Depending on the type of system being procured BWB specialists deal with respective areas for technical analysis, price analysis and negotiations. These areas include general items, such as communications, and items needed for specific functions in the respective Services. This approach is very similar to the US Defense Logistic Agency approach for procuring fuels and other products.

The objectives of the US and German procurement officials are accomplished through a four element negotiation process which includes factfinding, developing a negotiation strategy, conducting the negotiation session, and preparing post negotiation documents. Under both systems, the factfinding element of the process is used to identify and obtain information to complete the evaluation of the proposals. Factfinding should not be one sided. Both parties, Government and contractor, should view factfinding as an opportunity to exchange information and clarify any misunderstandings or erroneous assumptions that could impede a negotiation session [Ref. 18:V 2-4]. Additionally, the US proposals that are in the competitive range are often divided into three sections: technical,

management, and cost. For each area where the US Government has a concern and/or issue with a proposal, separate discussions are conducted with contractors. Deficiencies are identified to the contractor in the hopes that the information will enable the contractor to provide a better good or service. However, Government officials must avoid making the following errors:

- Technical transfusion: Conveying one companies approach to another company (confidential business strategy)  
[Ref. 1:para 15.201]
- Technical leveling: Telling weaker offerors others "technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property." [Ref. 1:para 15.306]
- Auctioning: While Government personnel are not permitted to reveal an offeror's price without permission, "the contracting officer may inform the offeror that its price is considered to be too high or too low." [Ref. 1:para 15.306]

#### **B. PRENEGOTIATION ACTIVITIES**

Some of the specific topics discussed by both countries during factfinding are elements affecting the costs in the proposals, data requirements, delivery schedule, design problems, and possible production problems. This is achieved through written correspondence, telephone calls, meetings, and/or visits to the site. [Ref. 21] [Ref. 15:p 7-44] While conducting a factfinding effort, it is important that four basic communications skills be adhered to--questioning, probing, listening, and

understanding. If these skills are not followed the factfinding effort will not be as productive as it could have been. By asking the right questions or offering the appropriate information, the representatives on both sides can address or even resolve some of the issues that may eventually distract the negotiation process. Factfinding is not a bargaining session and should not be treated as such. Conducting bargaining may inadvertently harm the Government's position because the issues are negotiated prior to completing analysis. [Ref. 18:V 2-5] The duration of the factfinding effort depends entirely on the amount and type of information required, but should continue until both sides agree to the facts. The German process normally takes six to eight weeks for the BWB analysts to conduct their assessment and another week to develop the Price Audit Report. [Ref. 21]

According to German procurement procedures, technical analysts and commercial (cost) analysts are teamed together to evaluate the contractor's proposal and conduct a technical and cost analysis. They travel from the BWB headquarters in Koblenz to the contractor's facility to conduct an extensive on-site technical and cost analysis. [Ref. 20] While visiting the contractor, the Government agents work extensively and openly with the contractor's representatives as they conduct their research for a Price Audit Report. The Price Audit Report is a collaboration of the findings of the two analysts. [Ref. 21] The commercial analyst examines the contractor's proposal estimate to determine whether they are fair and reasonable. In some cases, the analyst must accept cost data figures that are certified by the sixteen State Price Regulation Centers, which are responsible for establishing acceptable prices on certain goods and services. [Ref. 21] However, when a US company submits a proposal or has a contract with the German Government, the BWB has an agreement with the US Government pricing

authorities to conduct cost and pricing analysis. The US Defense Contract Accounting Agency (DCAA) is authorized to request permission from the company to examine its records on behalf of the BWB. [Ref. 13:p. 90]

While conducting a factfinding effort, the US negotiators begin developing their negotiation strategy, which is based on the personnel in the organization; the RFP; proposal; factfinding results; field pricing reports, including any audit finding; Independent Government Cost Estimates (IGCE); technical evaluations; acquisition histories; and market research. The plan includes developing a negotiation team, assigning roles to members, preparing preplanned positions designed to achieve the negotiation objectives, developing preplanned counter-offers to work toward those objectives, and planning for concessions of lesser value in exchange for concessions that are of greater value to the Government.

[Ref. 15:p. 7] The degree of thoroughness in preparation can dramatically impact on both countries' ability to negotiate an appropriate contract price for the good or service and the quality of the elements in the actual contract. The quality of the contract work statement and technical descriptions can be greatly improved when the negotiators are informed and prepared. This can produce tangible results and significant cost savings over the life of the procurement. [Ref. 20] [Ref. 18:V 3-5] In Germany, the analysts work together with the contractor to develop the Price Audit Report. This process is very transparent, and the contractor provides much of the data elements for the report. In return, the analysts openly permit the contractor to see the developing report and once the report is completed, the analysts discuss the report with the contractor and permits him or her to have a copy of the report. The report is not negotiable at this point. [Ref. 21]

During this process, the negotiators conduct a detailed assessment of their situation and position and conduct an estimate of the other

side's situation and position. This assessment and estimate is based on interests, priorities, concerns, risks, positions, strengths, and weaknesses. With this in mind, the US negotiators outline the purpose of the negotiation and the acquisition, determine their cost/price and profit range, assess their bargaining power and trade-offs, and develop their approach to conducting the session. [Ref. 1:para 15.406-3] This information will be coordinated in a price negotiation memorandum and the price and profit objective is cited on the SF1411, Contract Pricing Proposal Cover Sheet. An initial DD Form 1547, Record of Weighted Guidelines Application, is often prepared for use during the negotiations. The team also conducts rehearsals to test the validity of their approach and makes adjustments when necessary. Similarly, the German negotiator conducts an extensive review of the proposal and the Price Audit Report in preparation for the negotiation session, but there is no price negotiation memorandum requirement. [Ref. 21] [Ref. 20]

#### **C. NEGOTIATION SESSIONS**

The negotiation element of this process is when bargaining with the contractor is conducted. The length of the session varies from one situation to another. Sessions can range in length from a few moments, to days or even weeks, before reaching an agreement. [Ref. 21]

[Ref. 18:V 4-4] The negotiators utilize basic communications skills, as addressed earlier in this section, to gain valuable insight regarding the contractor's actual interests, concerns, risks, strengths, weaknesses, tactics, and position. This is achieved by asking open-ended questions and listening carefully to the negotiator's responses. Understanding these elements and reassessing the estimates can lead to a strategic advantage.

Some of the areas open to discussion are contained in the US's uniform contract format which follows this outline:

<u>Section</u>	<u>Title</u>
Part I--The Schedule	A Solicitation/Contract form B Supplies or Services and Prices/Costs C Description/Specifications/Work Statement D Packaging and Marking E Inspection and Acceptance F Deliveries or Performance G Contract Administration Data H Special Contract Requirements
Part II--Contract Clauses	I Contract Clauses
Part III--List of Documents	J List of Attachments Exhibits, & Other Attachments
Part IV--Representations and Instructions	K Representations, Certifications, and Other Statements of Offerors or Quoters L Instructions, Conditions, and Notices to Offerors or Quoters M Evaluation Factors for Award

[Ref. 1:para 15.204-1]

One of the most important elements of the negotiation process is determining whether or not certified cost or pricing data is required. Cost or pricing data shall not be obtained from contractors at or below the simplified acquisition threshold of \$100,000 or from businesses that meet Small Business Administration criteria. [Ref. 1:para 15.403-1] The contracting officer may require cost or pricing data for contract actions

greater than \$100,000 but less than \$500,000, when he or she has the approval of the head of the contracting activity (HCA).

[Ref 1:para 15.403] Addressed earlier in Chapter V C., however, the contracting officer shall require submission of certified cost or pricing data for all contracts at or above the \$500,000 threshold except when:

- There is adequate price competition.
- Prices are set by law or regulation.
- The item is a commercial item.
- Waiver has been granted by the HCA. There is no delegation provision.
- When modifying a contract or subcontract for commercial item.

[Ref. 1:para 15.403-1]

However, when cost or pricing data is not required, the contracting officer may require information other than cost or pricing data to support the determination of price reasonableness or cost realism.

[Ref. 1:para 15.403-1] It is very important for the Government to ensure that they have a clear understanding of the costs involved in the procurement and the costs to be used during the auditing of the contract in the post award phase of the contracting process.

In Germany, when the BWB determines that discussions and clarifications of technical matters are appropriate, the technical division will appoint the necessary experts. The experts shall be consulted; however, they are not allowed to take part, either directly or indirectly, in the contract award process if the technical clarification requires price discussions. The technical expert is limited to discussing the meaning of a clause but not the associated cost or price. [Ref. 6:p.

6] After determining the most economic quotation, the contracting authority is permitted to negotiate necessary technical changes of minor scope and in some cases, these changes may have an effect on the associated prices. When the offer is based on a functional statement of work in connection with constructional elements, however, the only authorized negotiations are those involving the functional portion of the statement of work.

[Ref. 6:p. 61]

During the negotiation phase of the process in the FRG, a draft contract is governed by the principle of freedom of contract (Privatautomatic). The essence of this principle is that a contract can contain whatever the contracting partners wish and is it concluded whenever both sides agree. This is because the government manages contracts like the commercial world--like any legal business or person. There are a number of uniform administrative guidelines which the contracting authority must adhere to when contracting. These guidelines were established to ensure equal treatment under similar circumstances and preclude arbitrary contracting decisions. [Ref. 19:p. 238] While the Teil B der Verdingungsordnung für Leistungen "Allgemeine Vertragsbedingungen für die Ausführung von Leistungen" VOL/B, (General Terms and Conditions for Placing Public Contracts Part B) is not statutory law, it is the primary administrative regulation for preparing contracts. When trying to apply the VOL/B, the procurement officer and the contractor must agree to the terms and conditions. Normally, there are no issues, but sometimes foreign firms are not willing to accept all of the elements of the VOL/B, which includes clauses regarding:

- Alteration of supplies and services after contract award;

- Termination of the contract;
- Penalties;
- Quality assurance;
- Warranties;
- Disputes settlement - of the approximately 19,000 contracts awarded in the past three years, there are only 25 litigation cases still pending. [Ref. 12:p. 19]

While the General Terms and Conditions of the contract rarely change, in order to satisfy the requirements of a group of similar individual cases, the General Terms and Conditions and any Additional Terms and Conditions may be amended by Supplemental Terms and Conditions. For individual cases, Special Terms and Conditions will be established to address specific requirements. Supplemental and Special Terms and Conditions deviations from the General Terms and Conditions should be limited to such cases for which special arrangements are explicitly provided in the General Terms and Conditions. These terms and conditions shall only include what is required as to the nature of supplies and services and its performance. [Ref. 6:p. 10]

There are four Supplementary Contractual Conditions of the Federal Minister of Defense for the VOL/B, which are known as the Zusätzliche Vertragsbedingungen des Bundesministeriums der Verteidigung (ZVB/BMVg zur VOL/B). The administrative guidelines that are at the Contracting Authority's disposal include the following:

- ABBV--Allgemeine Bedingungen für Beschaffungsverträge des Bundesministeriums der Verteidigung (General terms and conditions

for the placing of procurement contracts of the Federal Minister of Defense--attached to the offer),

- ABEI--Allgemeine Bedingungen für Entwicklungsverträge mit Industriefirmen (General terms and conditions for development contracts with industrial firms--attached to the tendering documents),
- ABFI--Allgemeine Bedingungen für Forschungsverträge mit Industriefirmen (General terms and conditions for research contracts with industrial firms--attached to the offer),
- And when the contract is for a simple delivery, a shorter Allgemeine Auftragsbedingungen (General contractual terms and conditions) is attached to the offer along with special annexes on a case-by-case basis. [Ref. 2:p. 49]

Normally, all of the appropriate conditions are already part of the tender documentation. Their conditions have to be clearly outlined as contractual provisions in order to be legally effective and enforceable.

[Ref. 19:p. 238]

The Additional, Supplementary, and Special Terms and Conditions of a contract must meet the following provisions:

- Documents;
- Scope of performance, percentage of additional or short supplies and services;
- Use of storage and working places, access roads, railheads, water and power connections;
- Transfer of the contract to subcontractors;
- Periods of performance;

- Supply or receiving center, if necessary, indication of location, building, room, etc.;
- Cost of shipment to the supply and receiving center;
- Type of packing, return of packing materials;
- Transfer risk;
- Warranty;
- Risk loss in case of Act of God;
- Penalties;
- Review of the quality of the services - quality control;
- Acceptance;
- Accounting;
- Hourly paid work;
- Payment;
- Lodging of security;
- Place of jurisdiction;
- Change of the contract price;
- Special arrangement as to warranty. [Ref. 6:p. 12]

In order to allow perfect price determination, the contractor and the BWB strive to consider all circumstances having an effect on the contract and record these circumstances in the terms and conditions of the contract. [Ref. 6:p. 8]

#### D. CONTRACT DEVELOPMENT

When writing the contract, the BWB ensures the contractor is not burdened with any risks that are beyond their control or risks that can

effect prices and target dates but cannot be adequately assessed in advance. [Ref. 6:p. 8] Therefore, when there is insufficient information to define the necessary supplies and services or parts using commercial practices concerning type, nature, and scope, they may be defined

- By describing their purpose, function, and other specific requirements;
- By their attributes and constructional details which link the types of descriptions

And when necessary, the supplies and services can be defined by drawings or other means--even by referencing similar supplies and services. [Ref. 6:p. 9]

Additionally, the contract in the US and Germany will specify that the contractor will adequately call on small and medium-sized companies regularly when requesting bids from subcontractors. The contract will also specify that when there are large orders that the contractor will endeavor to place orders with small and medium-size firms as subcontractors. [Ref. 6:p. 13] Therefore, when the German CAA conducts market research for public customers during the acquisition planning phase of the contracting process, it also monitors potential German subcontractors and informs BWB of potential candidates. This is another reason why it is recommended that companies register as a German supplier at the respective state CAA. [Ref. 2:p. 46]

The Germans do not have the extensive regulatory requirements for cost or pricing data. In fact, the Germans do not have an organization, such as DCAA, to conduct on-site audits. Therefore, once a price is agreed to no further examination of the costs data is required for all

fixed price contracts. [Ref. 21] German procurement officials, traditionally, spend more time preparing their reports and contracts than the American contracting officers. [Ref. 21] It has been said that the German procurement personnel are normally more informed and better prepared than their American counterparts. [Ref. 22] There are several possibilities for this assessment. Evidence of this point could stem from the fact that the US process develops contracts that are often brief, containing many annexes which make multiple references to the FAR. While the German contracts also contains multiple annexes, Germany's base document is traditionally more lengthy and in much more detail than the American contract. Traditionally, American contracts cite and refer to elements of the FAR for a better understanding and interpretation of the terms and conditions of the contract. Since the Germans do not have an elaborate regulation or series of regulations like the FAR and Defense Federal Acquisition Regulation Supplement (DFARS), they prepare very detailed contracts. Perhaps the use of these references to the FAR and the fact that the American contracting officers often bring others with them to the negotiation session reinforces the theory that US agents are not as informed as their German counterparts [Ref. 22]. Four other possibilities supporting this theory are:

- Inferior training of personnel;
- American professional acquisition corps may not be as experienced due to the way its military personnel enter the corps;
- Cultural issues regarding the way people conduct business; or
- US contracting officers have to conduct negotiations with more offerors than the Germans.

In addition, even when there are regulations available that could be cited, the Germans still write the clauses in the contract. [Ref. 20] This is one of the major reasons why the German emphasize employing attorneys in the procurement sections of the BWB. In fact, there are 35 contracting divisions and each division head and deputy are lawyers. The other contracting officers in the organization may or may not be lawyers, but all have received extensive training in their respective areas.

[Ref. 20]

#### E. POST NEGOTIATION ACTIVITIES

Upon completion of the formal negotiations, the US contracting officer documents the results of the negotiation session in the price negotiation memorandum. The memorandum is retained in the contract file and shall address the following questions:

- What was the offer and costs in the SF1411?
- What was the Government's price objective and what were the costs supporting that goal?
- What cost or pricing data were submitted but not relied on and not used?
- What were the delivery goals and pricing arrangement?
- What was discussed?
- What were the compelling arguments?
- What disposition was made of the principal points raised in preliminary analysis, included in the objective, and discussed in the negotiations?
- What cost values support the agreed to price?

- If different from those supporting the objective, what justifications are there for the differences?  
[Ref. 1:para 15.808]
- What specialist and auditor recommendations were not adopted?  
[Ref. 1:para 15.803]

The price negotiation memorandum serves as the official record to establish the reasonableness of the agreement. The document is the permanent record of the negotiation and traces the progress from proposal to agreement. In addition to the price negotiation memorandum, the contracting officer will also complete the DD Form 1547.

Upon completion of discussions, the US contracting officer may request or permit offerors to submit a final proposal revision to clarify and document understandings reached during negotiations. The contracting officer will establish a cut-off date for all final proposal revision submissions through written correspondence with the offerors.

[Ref. 1:para 15.307] Since the Germans actually work up the contract during the negotiation session, a final submission of an offer is normally not required.

#### **F. IFB CONSIDERATIONS**

While the discussion above address solicitations that stem from an RFP, similar activities can apply to a solicitation that has its origins in an IFB. When an agency head determines that an IFB should be canceled and that the use of negotiation is appropriate to complete the acquisition, the contracting officer may negotiate and make an award

without issuing a new solicitation document. This approach is subject to the following conditions:

- The contracting officer must give each responsible bidder an opportunity to submit a bid in response to the invitation for bid prior to notice of intention to negotiate.
- The negotiated price is the lowest negotiated price from any responsible bidder.
- The negotiated price is lower than the lowest rejected bid from any responsible bidder who submitted a bid in response to the invitation for bid. This does not apply if the invitation was canceled and all bids were rejected for the reasons cited in FAR 14.404-1(c)(8). [Ref. 1:para 15.103]

The Germans have similar transition circumstances that ensures they identify the best competitive or restricted proposal and allows them to conduct negotiations with the contractor. This normally occurs when there are changes in requirements or when the Government wants to clarify or reach a better understanding with the contractor. [Ref. 21]

#### **G. SUMMARY**

The German approach to analyzing a contractor's proposal is more participatory than that in the US. By sending a representative to the plant, the BWB develops a collaborative relationship where both parties benefit from a complete understanding of the requirements and accurate cost estimates. This area, however, requires additional consideration

because there are advantages and disadvantages depending on the evaluator's and the contractor's motivations and abilities.

Regarding the conduct of negotiations, both countries execute the negotiation process in the same manner, but the Germans develop more detailed contracts and less reference to regulations than their American counterparts. Consequently, the German contracting offices have lawyers serving at many levels within the organization to oversee and conduct negotiations and prepare contracts. This process may be more time consuming than the US system, but it produces tailored contracts that contain excruciating detail. While there is a trade-off of time and money for specificity, the German negotiators are more familiar with the requirements and the proposal than their American counterparts.

The next chapter focuses on contract award, notifications, debriefings, and protests. Special attention should be given to Germany's lack of emphasis on debriefings and the contractor's limited avenues for resolving conflicts with the German Government.

## IX. CONTRACT AWARD PHASES

### A. CONTRACT AWARD

Under the American system, once the proposals are collected, the SSEB evaluates the proposals against the criteria established in the Acquisition Planning Phase. When conducting this evaluation, the evaluation team must understand the established evaluation criteria and ensure that it is what is used in the evaluation of the proposals. The proposal will be scored in accordance with the results of the evaluation within the scoring model. The proposals are forwarded to the SSAC for review. The SSAC compares the proposals, based on the SSEB's findings, against one another and provides a recommendation to the SSA, who independently approves the winning proposal. Under this system, the winning proposal should provide the "best value" for the Government. This decision is documented in writing and includes "the rationale for any business judgements and tradeoffs made or relied on by the SSA."

[Ref. 1:para 15.308]

Upon the handshake of contractor and Government official, both procurement systems require the contractor to submit certified cost and pricing data in addition to those in the proposal. Obviously, this is more likely to occur in Germany since the only exception to this rule is for market price contracts. In the US, the Truth in Negotiations Act requires that cost and pricing data will be submitted for contracts that are anticipated to exceed \$500,000. [Ref. 3:p.127] However, the following exceptions apply:

- Contracts awarded with adequate price competition
- Catalog or market priced purchases

- Laws or regulations have established the price
- For commercial items [Ref. 3:p. 127]

Signing the written contract is a certification of the agreement between the Government and the contractor. [Ref. 26]

#### **B. NOTIFICATION OF AWARD**

Although neither country has a standard time limit for awarding a contract to a successful bidder, expiration time limits are set in the solicitation document under the German system. [Ref. 12:p. 30] These time limits are normally between 30 and 60 days following closure of submitting tenders. [Ref. 26] Once the contract is awarded, a synopsis of awarded contracts is submitted to the appropriate publications under both contracting systems. The synopsis is listed in the CBD for US contracts and in the Bundesausschreibungsblatt for German contracts. [Ref. 27] For "International" procedure-based German contracts, they are in the WEAG Bulletin for defense contracts in excess of 1M European Currency Units (ECU), approximately 2M DM or (\$1.3M US). [Ref. 12:p. 16]

In Germany, written award of the contract is made in enough time to be received by competitors before the expiration of the period of award. In the event that the award of the contract is not made in writing, the contractor will be immediately acknowledged contract award in writing. Additionally, if the contract is awarded in time and without changes, then the contract is considered concluded, even when provisions were made for the contract to be executed at a later date. [Ref. 6:p. 31] If a contract award is delayed in Germany, the time of award can only be extended through an agreement with the respective bidder. [Ref. 6:p. 32]

When it is specified in the offeror's proposal and a stamped, addressed envelope is attached to the proposal, the BWB will inform the unsuccessful bidders immediately following the awarding of the contract.

The formal written notification will contain the following:

- Reasons for the rejecting the bid (e.g. price, technical, functional, design, etc.), while not providing the offeror with data from the other competitors.
- Number of bids received.
- The lowest and highest priced proposals.

This notification by the BWB is required through written communication within seven working days of contract award. Additionally, GATT states that within 60 days after contract award, publication of the value of the winning bid and the name and address of the winning supplier is required. [Ref. 4:p. 8] EU directive 88/295/EEC requires that the notice of contract award be published within 48 days after contract award. [Ref. 4:p. 10] Requested drafts, presentations, samples, and specimens to rejected bids will be returned to the offerors within 24 working days after rejections of the offer. All others will be retained by the BWB. In the case of reinvitation to bid or other purposes rejected bids and presentations will not be used unless approved by the offeror.

[Ref. 6:p. 31]

Written notification will not be sent out if:

- The contract award price is less than 10,000 DM (\$5,700 US), or
- Less than eight proposals were received, or

- The request for proposal was based on a functional statement of work, or
- The proposal was excluded early on in the source evaluation process because of offeror or proposal deficiencies (important price information missing, no signature, alterations, etc.)

[Ref 29:p. 30]

In the US, the contracting officer will provide written notification to each offeror who was in the competitive range but was not selected.

The notification will include:

- The number of offeror's solicited;
- The number of proposals received;
- The name and address of each offeror receiving an award;
- The items, quantities, and any stated unit prices of each award;
- In general terms, the reason(s) the offeror's proposal was not accepted. [Ref. 1:para 15.503]

### **C. DEBRIEFINGS**

Upon receipt of written notification all unsuccessful offerors who request a debriefing within 3 days of receipt of written notification should receive a debriefing within 5 days. Offerors who requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons, should also be given a debriefing within this time period. The debriefing should inform the contractor of his overall evaluated cost or price and technical rating, identify the proposal weaknesses or deficiencies, and overall ranking of all offerors.

[Ref 1:para 15.506] [Ref. 3:p. 57] While the BWB conducts debriefings, it

has no set timelines for requesting or receiving the debriefings. Rather, it is considered that the debriefings should be requested and given as soon as possible and within good reason. [Ref. 27] The intent of the debriefings is the same for both countries--to inform the contractor of the proposal deficiencies in the hope of giving the him a greater chance of success in future bidding. [Ref. 12:p.30] [Ref. 3:p. 149]

The importance of debriefings cannot be underestimated because it can significantly influence an unsuccessful offeror's decision whether to file a protest or not. The debriefing should be clear, concise, and unambiguous. If the debriefing demonstrates to the offerors that they were treated fairly; proves that their proposals were evaluated against the RFP criteria in accordance with the applicable solicitation, applicable laws, and regulations; and ensures that the integrity of the acquisition process was maintained, then the unsuccessful offerors should understand the futility in pursuing a protest. The "bottom line" is that good debriefings do not encourage protests and/or litigation. On the contrary, comprehensive debriefings are the most effective deterrent to the misunderstandings and distrust that lead to litigation. Consequently, while the Government should be aware of the possibility of delays that can result from the filing of protests, the Government should not be concerned with protests if the process is followed properly.

#### **D. PROTESTS**

Dissatisfied unsuccessful offerors are permitted to protest contract awards in the United States. The protests must be submitted to the Government within 10 days of the awarding of the contract. Upon receipt of a protest, work on the project must stop until the protest is resolved. Unresolved protests are sent to the GAO. The GAO has one day to notify

the agency that a protest exists. The agency has 35 days to respond to the GAO, and the GAO has the remainder of a maximum of 100 days to make a decision. [Ref. 54:p. 39039] Unsuccessful offerors can also pursue resolution of these disputes through alternative dispute resolutions (ADRs) or the courts.

By complying with the policies and procedures outlined in the appropriate procurement regulations, Acquisition Strategy, Acquisition Plan, and Source Selection Plan, the Government can be confident that the courts and boards will support its decision. This assurance is founded in the 1969 United States Court of Claims case *Herbert Schoenbrod v. United States*, where the court determined that it will not challenge the contracting officer decision except when the process is not followed properly (i.e. arbitrary decisions, irrational processes, lack of compliance with the RFP). [Ref. 31:p. 69] However, one or two mistakes in the execution of this process can result in protests and/or the procurement of less than acceptable products and services. This is why diligence and attention to detail of all members in the process is paramount.

Since Government contracts in Germany are considered commercial contracts, there are no protest procedures available to delay or stop any "hard" defense contracts from being executed. An unsuccessful offeror can appeal to members of the BWB, but once all avenues of appeal through the BWB bureaucracy have been exhausted, the contractor must file a legal suit in civil court system. The first level in the legal process is usually the Landgericht Koblenz, since the BWB is in that district. [Ref. 17:p. 61] For all other procurements of "nonhard" defense items in excess of the threshold level, protests can be filed with the appropriate elements of the Europe Union. [Ref. 26] An example of this occurred several years ago when Germany attempted to place restrictions on sources

of uniforms for troops. This was quickly removed from discussion when potential law suit filings in the European Court threatened the Government. [Ref. 17:p. 60] Unfortunately for the dissatisfied offerors, cases move more slowly in Germany than in the US and there appears to be a reluctance to settle out of court. [Ref. 28:p. 137]

Unfortunately for German officials, contractors have not been satisfied by the actions taken by the German Government to permit unsuccessful or firms determined to be outside the competitive range file complaints and receive justice. Currently, it remains unknown if the European Court of Justice will find German's implementation of the EU Directives to be adequate. In any event, increasing numbers of offerors have filed complaints with the EC in Brussels. One such case involves General Electric (GE) and the former East German energy group VEAG. In this situation, GE submitted an offer for a steam turbine worth approximately 400M DM [\$250M (US)]. During the process, GE was asked to submit data on reference projects, and GE complied. GE was later informed that it was excluded from further negotiations because, according to the VEAG, GE did not have the specific experience required to complete the project. Even the US Government has conducted talks with the EC to correct this problem and to seek liberalization of public procurement rules. Additionally, the US and many contractors are seeking remedies for damages since currently there are no provisions to provide compensation for those organizations that are wronged. [Ref. 38:p. 310]

Due to Germany's tradition of non-binding procurement rules in the form of the VOL/A and VOL/B, it has experienced disagreements and exposed itself to pressure from the EU. Germany has been reluctant to accept any rules which create enforceable rights of private parties in the procurement process. This led Germany to implement EU directives regarding rights by merely adding them as amendments to the VOL/A.

[Ref. 19:p. 229] However, in 1989, the EU decided that the implementation was inadequate because the VOL/A was still non-binding and did not appropriately grant rights to unsuccessful offerors. This disagreement resulted in the EU commencing proceedings under article 169 of the EC Treaty against the FRG in 1990. This disagreement and confrontation between the FRG and the EU continued until 1993 when the FRG conceded to the EU's demands by passing an amendment to the Act on Budget Principles (Haushaltsgrundsätzgesetz) that provides a legal basis for the federal government to regulate public procurement through regulations. The results of this legislation include procurement rules requiring an indication in tender documentation which review body has competence to review the tender process. The appropriate reviewing body depends on whether the entity awarding the contract is public or private. In either case, the review body may take interim measures during the award process, which include suspending the awarding process until it can make a decision. Although this avenue is not available upon award of the contract, an offeror has the right to request the review body to review the conduct of the process, or a decision. Any decision made by the review body is subject to an appeal to the Award Supervisory Committee (Vergabeüberwachungsausschufs). The Federal Cartel Office established the Award Supervisory Committee, at the Federal level, in Berlin. Upon the date of the publication referenced in 1996, the Committee handed down 10 decisions, and in most cases, found that mistakes were made during the award process. Additionally, each state is required to establish its own Award Supervisory Committee to monitor public contract awards for the state and local governments. [Ref. 38:p. 309]

## E. SUMMARY

This chapter discussed contract award, notifications, debriefings and protests. Once a contract is awarded, the US and the FRG require the submission of certified cost or pricing data for major acquisitions. Unfortunately, this approach does not foster trust and mutual respect between the Government and the contractor. Since Germany does not have an organization like DCMC or DCAA to oversee and monitor the contractor, it is more understandable that Germany would require cost and pricing data, but it is far from a commercial practice. After contract award, both countries have requirements to advertise contract award and notify those unsuccessful offerors who requested direct notification. Both countries also conduct debriefings, but it is evident that the Germans do not embrace the debriefing concept as strongly as the US. This could lead to more disgruntled contractors. In the US, contractors can appeal to the contracting officer, the procuring agency, and the GAO for protests, or seek an ADR before filing with the Federal courts and Boards. In Germany, contractors submitting a proposal under "National" procedures in German can appeal to the BWB or file suit in the civil court system. For "nonhard" defense items over the threshold, contractors can seek relief through EC channels.

In the next chapter, analysis focuses on the differences in the domestic US and German environments, the international environment and how it impacts the acquisition processes in the countries. The chapter also addresses similarities that should be changed to improve the processes.



## X. ANALYSIS

After examining the significant elements of the acquisition systems of the US and the FRG, it is evident that there are numerous similarities and differences. Many of the similarities stem from historical tenets of a good common sense approach to doing business and often follow commercial contracting practices. Assessing the origins and reasons for some of the differences is more difficult to determine. This chapter focuses primarily on presenting, explaining, analyzing, and assessing the implication of these differences on two different levels--international and procurement. Cost and pricing data requirements are the only similarity where both countries should reconsider their positions.

At the international level, the US and German acquisition and contracting systems are evolving along different timelines. The Germans are focusing on regional and international changes while the US is focused on domestic changes and reforms to meet those changes. At the procurement level, the US has more complex acquisition and contracting systems which possess greater flexibility and use of technology--something the Germans should implement. These technological innovations significantly help the US conduct domestic procurements. These benefits will not be fully realized in international procurements until other countries and foreign firms increase automation technology and the US changes its laws, policies, and procedures to improve the US's ability to meet the changing global trade environments.

The Figure 9 "Comparison of Defense Acquisition Cultures" on the next page illustrates some of the significant macro-level differences between the US and the FRG acquisition cultures as they relate to practice of international based procurements.

Figure 9

**COMPARISON OF DEFENSE ACQUISITION CULTURES**

UNITED STATES

- Postponed modernization
- Domestic market still considered sufficient to sustain independent industry
- Two or more competitors in each sector
- Exports increasing percentage through direct sales and FMS
- Government-to-government collaboration is the exception
- Focused on domestic sourcing
- Large contractors
- Focusing on domestic reforms

[Developed by researcher]

GERMANY

- Continued modernization
- Domestic markets insufficient to sustain industrial base
- National champions in many sectors, and often one European industrial alliance
- Cooperation among nations to increase quantities purchased, but a significant push for more export sales
- Transnational collaboration is the norm through the life of the program
- Prepared for international sourcing
- Smaller contractors pursuing mergers and acquisitions
- Reforming to comply with Regional 'block' requirements

When examining the differences, one should consider the different economic environments and political climates in which the two systems operate. In past decades, the United States has had the advantage of economies of scale. Its growing defense budgets and enormous defense industry provided many procurement opportunities and an occasional mistake could be overlooked by Congress and the Services. However, this has changed rapidly. As budgets decreased, DoD equipment modernization slowed and even postponed in some cases in order to concentrate on near term readiness concerns. Simultaneously, the defense industry in the US consolidated and congressional oversight increased as competition for

limited dollars escalated. Consolidation in the US defense industry has produced economically larger corporations with greater capabilities than their Germany counterparts. This consolidation has had a cost--fewer potential suppliers in many industrial sectors. To ensure the US domestic market is sufficient to sustain independent industry, the DoD tries to maintain consistent procurements. To support the earning growth of these larger corporations and reduce prices for Government procurement, the DoD also assists industry by fully supporting FMS and direct sales programs around the world.

Although the German military has also experienced significant budget cuts, the German Government is proceeding with the modernization of its leaner fighting forces which now include the forces of the former East Germany. German officials are also trying to do more with less, as they become more active in NATO operations, specifically in supporting missions like the Stabilization Force (SFOR) in Bosnia. This requires Germany, like the US, to make equipment and armament changes to meet the new mission requirements, while maintaining the capacity to defend itself and its interests in conventional conflicts. [Ref. 39:p. 7] Since Germany's domestic military procurements are insufficient to sustain industry's needs, Germany has pursued international collaborations and government-to-government procurement agreements primarily with other EC members. An example of these collaborations is that 70% of German aerospace programs are cooperative European endeavors. [Ref. 32:p. 613] These collaborations result in cost sharing for the development of systems and cost reductions during the production phase due to larger orders, sustained production lines, and the benefits of learning curve projection realization. Industry, however, wants more and supports legislative initiatives that promote military export sales in the interest of global market expansion.

Another dynamic aspect that must be addressed is the German and American military's roles and mission since the end of the "Cold War". Force reductions and a greater emphasis on supporting United Nations mandates has increased support for multi-national forces to conduct coalition operations. This has increased the importance of interoperability among the forces whether they are conducting conventional military operations like "Desert Storm", peace enforcement operations like Bosnia, or humanitarian relief operations like Rwanda. These interoperability issues are not limited to communications equipment designed to facilitate coordination, preparation, and execution of military operations. Since the United Nations can levy manpower restrictions, as they were by the "Dayton Accord" for the Bosnia peace enforcement operation, and nations have reduced force structures, international cooperation is essential. Coalition forces must have the ability to conduct maintenance operations on other nation's equipment, to obtain the necessary repair parts, and to execute other logistics functions. Consequently, development, production, and employment of like systems can help to address and overcome these concerns.

Since the number of domestic companies available to compete for contracts in the US and Germany has been reduced significantly, pursuing international sources for contracts would increase competition and innovation. Currently, Germany is better positioned than the US to conduct joint procurements with other nations and to accept offers from international sources. German regulations comply with international and regional agreements like GATT, EU directives and cooperation within the WEAG. Germany also has limited barriers to entry for foreign offerors and socio-economic set asides, where as the US has many. The Buy America Act and Congress' manipulation of the Defense Appropriations and Authorizations bills to restrict potential offerors impedes competition

and creates resentment among international firms who then lobby their governments to take action against the US. This is a real concern that the US will have to contend with as global markets evolve.

Currently, joint or multi-national developments of systems are extremely costly and time consuming. If the contractor has to satisfy numerous different requirements or provide data in numerous forms to meet individual national desires, it creates additional problems and costs. In Europe, the WEAG procedures have cleared up some of the problems, but others still exist. Some of these problems have been experienced by British and German missile manufacturers, who teamed together to build the North Atlantic Treaty Organization's (NATO) advanced short-range air-to-air missile (ASRAAM). [Ref. 30:p. 13] The US, Great Britain, and Germany all have different procurement practices and requirements, and the ASRAAM program has had to be structured to accommodate them all. This process incurs significant cost increases, overhead, and time requirements for the Governments and industry involved. [Ref. 30:p. 14] Consequently, procedures need to be developed to expedite the reporting process and eliminate redundant activities that drive up costs. While there are initiatives in Europe to develop an EC buying agency which would correct many of these problems, the US is not actively engaged in concession or cooperation efforts to achieve these ends. This may present problems for the US in the future as the EC focuses more on the whole instead of the parts.

There are also international trade implications which affect the acquisition and contracting systems. It is obvious that Germany faces greater challenges as it tries to comply with external regulations and directives, in addition to its own. Currently, German officials and industry are complying with three sets of rules. Simply trying to understand the complexity of this situation must make it difficult to

ensure that procurement officials are following the correct procedures in each procurement situation.

Currently, the US is not preparing to implement these types of systems. This should raise concerns at the DoD and US corporate officer levels, because conditions in Europe are changing rapidly and the US may lose the dominant position it currently enjoys. Germany's Daimler-Benz is preparing to merge its aerospace division with British Aerospace BAe next year. This move, followed by further acquisitions of Aerospatiale/Matra of France and other European defense contractors, will create a pan-European defense contractor to challenge the giant US contractors Boeing and Lockheed Martin. [Ref. 60] If this occurs, there will be increased support among the European nations to award contracts to this newly formed corporation in much the same way members of Congress support programs to generate contracts for their constituency. This will negatively affect US contractors because they will lose FMS or direct sales to European nations and other nations elect to make purchases from the European powerhouse. Boeing is facing a similar scenario today in the commercial airline industry as the start-up European consortium AirBus seizes market share. While aircraft development and production is a highly technical field, Philip Condit, Boeing's Chairman and Chief Executive Officer, recently stated that although innovative plane configurations and construction is being demanded by customers, no one is willing to pay the monies required. Consequently, the aircraft industry is becoming a commodity industry where the best price that meets the satisfactory requirement wins the contract. [Ref. 61] This has resulted in declining margins and lower earnings growth. American defense contractors could face a similar fate if developing plans in Europe come to fruition. From the US Government's perspective, these issues will result in fewer orders, higher prices to obtain cutting edge technologies, and disgruntled contractors.

By building a large collection or 'block' of nations, the EC and WEAG will be able to leverage its collective might to negotiate with individuals or groups of nations and contractors who want to conduct business within this extremely large market. They will also be in a position to force their procedures on others in much the same way the US has done in the past. Consequently, the US must develop and implement reforms to meet the changes developing in Europe. The US must also prepare for the changes that will result from the passage of a "Western Hemisphere Trade Block" agreement and anticipate changes that might result from the signing of other international agreements. During this period of reform and reduced numbers and scope of military procurements, DoD leadership and Congress should take this opportunity to develop new strategies to deal with a significantly changing environment as it relates to requirements generation, number of potential offers, offers' technical capabilities, fewer procurement dollars, coalition operations, need for interoperability, a more powerful European market, and larger European contractors.

The Figure 10 "Different Defense Acquisition Cultures" illustrates some of the significant differences between the US and the FRG at the procurement level. The US's decentralized approach to procuring major systems increases flexibility and allows for the tailoring of systems to meet the user's needs, but it also increases manpower and infrastructure requirements, impedes interoperability between the Services, and reduces the size of quantity orders. Funding constraints and increased joint operations are forcing the DoD to deal with these issues. The development of the JROC and the decision to develop the Joint Strike Fighter (JSF) to satisfy the Air Force, Navy, and Marine mission requirements are helping to eliminate some of these issues. The evolution of process changes, however, will take time and the power of the JROC must be balanced with

Figure 10

**DIFFERENT DEFENSE ACQUISITION CULTURES**

<u>UNITED STATES</u>	<u>GERMANY</u>
• Decentralized major systems procurement	• Centralized major systems procurement
• Centralized commodities procurements	• Decentralized commodities procurement
• Complex contracting structure and regulations with the tools for tailoring to the acquisition	• Less structured contracting process and regulations
• Extensive use of automation technologies and developing integrated systems	• Lack of automation technologies
• Decentralized market research is conducted	• Integrated market research capacity
• Two bidding methods	• Three bidding methods
• One method of advertising	• Three methods of advertising
• Considerable oversight of contractors	• Hands off approach after contract award

[Developed by researcher]

the needs of the Services. The current policy of changing PEOs between the Air Force and the Navy every six months, while it appears to be effective, it is inefficient. Until the DoD completely faces and overcomes these internal interoperability issues, it is difficult to imagine that the DoD will fully support and overcome NATO and other coalition force interoperability issues.

It is also evident that the American process is better designed for procurements at lower levels than the German system and that the application and use of the FAR and its supplements can streamline the procurement process. Major General (Retired) Charles Henry, former procurement specialist for the United States Army and DCMC, recommends that procurements be more centralized in America and that the acquisition

agencies be consolidated for all Services under the Office of the Secretary of Defense. [Ref. 29] While this approach would reduce flexibility, it could improve efficiency, reduce internal administrative costs, and improve economies of scale in pursuit of reducing the purchase price for goods and services. If this approach were implemented, the US structure and implementation of procurement operations would more closely mirror those of the FRG.

The centralized German structure appears confusing because of the EC, GATT, WEAG, and "National" requirements that the FRG must follow. The bottomline is that Germany's BWB procures all major systems, unlike the US SYSCOMs in the different branches of Services. Unlike the US, Germany complies with WEAG guidelines when procuring "hard" defense systems such as aircraft and tanks costing in excess of 1M ECU or 1,905,800 DM [\$1,089,029 (US)]. When procuring "nonhard" defense items like uniforms, light equipment and commercial items in excess of 137,537 ECU or 262,118 DM [\$149,781 (US)], EC directives and their associated procedures are followed. Both of the "hard" and "nonhard" situations cited above are termed "International" procurements. When "hard" and "nonhard" defense materials are procured below the threshold levels, they are termed "National" procurements and follow Germany's VOL/A procedures.

An interesting contradiction in procurement philosophies is that the US conducts centralized purchases through DLA Defense Supply Centers like the one in Philadelphia which supplies troop support and general commodities and the General Services Administration which provide centralized procurements of furniture, office equipment and supplies, tools, computers, and telephones. [Ref. 57] [Ref. 58] Conversely, the Germans procure the majority of these items locally through their decentralized (local) buying offices. [Ref. 37] The irony of this is that while many more contracts are awarded for these types of goods, the

majority of procurement monies are spent on major systems. Initial impressions indicate that trying to save monies through centralized buying would be more productive if the larger ticket items were targeted. Incidentally, the US's use of credit cards is decentralizing the purchase of some of these commodity items. The credit card reduces administrative costs for the Government and decreases the payment times to vendors.

After assessing the acquisition elements of the US and German systems (not the international variations) and comparing them to one another, it is evident that the American system is more complex, but makes better use of technological advances than the German system. The United States is making effective use of fax machines, computer networks, computer systems for data transferring, email, and electronic commerce. The DoD is implementing policies, procedures, and technological applications to facilitate transactions between the Government and its suppliers without requiring the use of hard copy media, including electronic source selection. This practice reduces procurement administrative lead time (PALT) and bidding and proposal costs. [Ref. 59:p. 121a] Since 1997, all new contracts are required to have on-line access to or delivery of their program and technical data in digital form. This process reduces contractor costs and increases the quality of major contract deliverables. [Ref. 59:p. 127a] While Germany does not have the computer system infrastructure that the United States enjoys, it may not be using its available resources to their maximum potential. [Ref. 37] The 'old fashion' approach used by the Germans, however, does reduce potential opportunities for impropriety since documents are certified and transferred by postal courier. Conversely, fax documents, electronic data, and commercial courier transfers are often not as secure and could be intercepted by competitors or elements of the documents could be misplaced. Current and future improvements to automation equipment,

however, are eliminating some of these concerns. It is believed that Germany's lack of automation improvements is more a function of not having the needed Government monies to invest due to the continued Government integration of the former East Germany and the relocation of the capital to Berlin. [Ref. 37] Additionally, one of the benefits of employing automation equipment is that it reduces manpower requirements. Germany might be unwilling to make more job cuts during a period of high unemployment. Whatever the motivations are, the German Government must make an effort to improve its capabilities before industry and other nations leave them behind.

It is also evident that the American system provides a more liberal approach and greater flexibility to Government officials and the contractors than the German system, but it is difficult to assess whether the system is more efficient or saves time. The complexity of the US system and its lengthy procedures could impede the different phases of the acquisition process. Although the US system may result in the procurement of better systems, major and minor, due to the advantages of conducting more extensive communications and negotiations, there is a potential trade off of delays which may not be at acceptable levels. If the system is operating effectively, delays in the process should occur infrequently.

When looking at the acquisition planning phase of the contracting process, it becomes evident that the US has a very structured acquisition planning framework that must be followed. However, within that structure, the possibilities for tailoring the process are significant. In fact, the DoD has streamlined the preaward process and implemented tools and methods to decrease the time and effort required by both the Government and industry from solicitation to contract award including integrated product team (IPT) type activities (Alpha contracting), oral proposals, and oral presentations to reduce PALT and bidding and proposal costs. [Ref. 59:p.

121a] It also reduces contract schedules and costs and provides greater access to commercial materials and practices.

The German's use of the CAA is very effective. The level of information and insight that the contracting officer can receive is significant. While the SBA in the US provides similar information, the US does not have an organization to monitor and track medium and large contractors. Consequently, no one organization has the responsibility for monitoring and updating a list of potential offerors and their past performance data. This would be effective, because the implementation of a past performance tracking system will motivate contractors to improve performance on their contracts and provide quality products and services for the DoD. This will then result in more contract awards for contractors with the superior performance records. [Ref. 59:p. 120a]

The bidding methods of the FRG are significantly more complex than those of the US because of the "National" and "International" requirements as well as the fact that there are three bidding methods. While the three methods are intended to increase flexibility for the BWB, the restricted method, by the nature of its title, and the negotiated method, by the nature of its implementation, give the impression that they restrict competition. This is not their intention. They are designed to solicit what the Government believes will be proposals from those firms that have the best chance to fulfill the requirements. The American RFP process is presented as a more open process that embraces offerors from all contractors who feel they can meet the requirements.

The "National" and "International" requirements also burden the German Government with increased advertising responsibilities and costs. Fortunately for the Germans, major systems procurement is conducted in a centralized manner. Therefore, the costs and manpower required to coordinate, monitor, publish, and supervise the advertising operations are

centralized, but the costs are prohibitive to the point that Germany is not meeting its requirements by publishing the WEAG Bulletin in accordance with WEAG guidelines. If the US were required to comply with similar publication requirements, the manpower and infrastructure additions in SYSCOMs would be significant.

The US and Germany have effective language in their solicitation documents to ensure contractors are motivated to submit legitimate offers the first time or face immediate loss of contract award or possible elimination from the competitive range. This is intended to reduce the number of substandard proposal submissions and save all parties involved the time and cost of preparing, reviewing, and evaluating poorly or inappropriately prepared proposals.

The German approach to assessing proposals and developing its Price Audit Report is more open and collaborative than the US process. It also provides the German procurement officials with a better understanding of the contractor's approach to meeting the Government's requirements. This should also lead to a better comfort level regarding the cost projections associated with the project because a Government cost analyst contributed to the estimate development. The US cost estimating approach is usually based more on parametric estimates or historical data, which can be more one-sided and can lead to misinterpretations and errors.

It is unclear whether the German's approach of having technical and commercial (cost) analysts from Koblenz visit offeror's plants to conduct their evaluations of the proposals is better than the US procedure of having in-plant DCMC representatives conduct the evaluation. On the one hand, the DCMC representatives may have established an inappropriate relationship with the contractor or be looking for a contract to be awarded to that plant to ensure job security; but DCAA and Government and/or contracted teams could also be called in to conduct IGCE. This

provides the contracting officer additional information that could support or contradict other evaluations. Additionally, if the DCMC or DCAA representatives are on the 'up and up', they may have better contacts within the contractor's organization and thus obtain better insight than the BWB analysts could ever get. Either way, when reporting is accurate, the information can be extremely helpful in a negotiation session.

Unlike the US, the Germans permit the contractors to execute their plan with little oversight or interference. This approach lends itself to better cooperation and mutual understanding. As procurement philosophies evolve over time and more regional and international agreements are signed, there will be pressure to make changes in policies, regulations, and procedures. While the US is moving away from deliberate oversight to insight, it has further to go if US policy is to mirror that of Germany and the EC. Consequently, the US must either move from oversight and insight which contractors prefer or market the DCMC and DCAA on the concept of a 'block' oversight organization that oversees international procurements. The later will be a hard sell because of the increased costs which will be further exacerbated by the fact that the US has different reporting requirements and procedures than the EC.

The personnel reductions in the DCAA and DCMC offices around the world have forced the DoD to reevaluate the level of oversight it maintains regarding contractor operations. These reductions have caused the DoD to pursue Contractor Self-Oversight (CSO) programs, which allow "quality contractors" the opportunity to have their personnel perform selected surveillance functions in lieu of DoD personnel. [Ref. 55:p. 1] While this method of dealing with contractors is revolutionary for the DoD, it is a proven approach in "free market" systems where those that perform get business and those that do not perform perish. The DoD's emphasis on procuring more commercial items and nondevelopmental items

(NDI) to reduce risks and costs and requiring past performance information when evaluating contracts expected to exceed \$1,000,000 has also reduced the pressure on DCAA and DCMC to oversee and examine many contracts.

[Ref. 1:para 15.304 (c) (2)]

While Germany recognizes commercially acceptable quality program standards like ISO 9000 and the US transitions to this approach in an effort to reduce paperwork and redundant quality assurance systems, both countries require certified cost and pricing data upon signing of a contract. This is contradictory to other commercial practice reform initiatives. When the actual costs are not in-line with the cost and pricing data, finger pointing occurs and the Government begins to mistrust the contractor's intentions. Similarly, if these discrepancies are identified and publicized by the media, the problems will become worse because of public mistrust of the Government and the contractor. Consequently, this is an element in the process that should be eliminated, because effective past performance assessments and maintenance will identify those contractors that are unable to develop accurate estimate and meet the terms of the contract.

The previous analysis discussed regional and international economic and political changes and their potential affects on the government procurement processes. Primary focus of this analysis was on the differences in political climates and the differences in the procurement processes. This analysis identified areas of weakness and to explored the other nation's methods for dealing with these situations and the procedures that have been developed as possible solutions to handle these weaknesses. The analysis effort has discovered that both Governments' procedures need improvement. Evidence also suggests that the Governments would be best served if cooperative solutions were developed and implemented.



## XI. CONCLUSIONS AND RECOMMENDATIONS

### A. CONCLUSIONS

There are significant social, economic, and political changes occurring around the world that may present serious issues for the procurement processes of the US and German Governments and the corporations in these nations. NATO has established a strategy of promoting peace, reducing conflicts and threats, deterring aggression and coercion, and responding to the full spectrum of potential crises. To implement this strategy, NATO forces will continue to be involved in limited engagements, which are fought with smaller, lighter, more mobile forces and equipment. Although these forces will have more concentrated firepower that can be precisely delivered from long range, there is also an increased likelihood of committing forces to coalition operations down to the brigade level. Consequently, nations planning to participate in these operations must place a high premium on interoperability, such as ensuring that allied systems are compatible and can be sustained through a common logistics support structure.

Global markets are evolving, and this is leading to increased pressures to open new trading markets and to reduce trade restrictions in existing markets. This evolution is occurring at regional and international levels and/or has resulted in treaties and agreements which require more openness. As more treaties and agreements are negotiated, countries will be forced to modify their procurement systems to comply with the new arrangements.

As defense budgets in the US declined, there was a significant consolidation within industry resulting in only a few competitors for major defense systems development and production. Similar mergers have

occurred in Europe, but mega-mergers of some of the largest European firms remain on the horizon. These larger pan-European corporations will be better positioned to compete with US corporations. This could lead to increased concern about exclusivity on both sides of the Atlantic, resulting in a counterproductive transatlantic competition characterized as "Fortress America" versus "Fortress Europe".

The US's protectionist policies are also damaging because they contribute to initiatives for retaliation against the US from other nations. These policies even alienate America's closest allies at times. Consequently, as the EC's political, economic, and military influence becomes more collective and internal trade barriers are eliminated, the respective members may become less dependent on American major systems production. If these issues are not addressed, the US Government and US contractors may experience significant deterioration of the dominant trade position that has been enjoyed for over fifty years.

Finally, as the US and German militaries' contend with budgetary constraints, they will be forced to make difficult trade-offs between equipment modernization, military force structure, and support infrastructure. Making the wrong decisions could put each nation's security at risk. While it is unknown how the DoD and the MoD will handle these issues, it is known that as contractor revenues from military procurements decline relative to their commercial business, the manufacturers will be less inclined to deal with the numerous Governments at the expense of commercials sales. The Governments must incorporate more commercial practices into their systems if the Governments are to remain competitive as buyers. Consequently, the German and US Governments systems will become more similar as they revise their procurement systems to comply with regional and international requirements and adapt to commercial practices.

## B. RECOMMENDATIONS

To meet the global market and industry changes, interoperability issues, and social, economic, and political challenges discusses previously, the US and German Governments should develop procurement regulations, directives, and systems that are compatible. This could eliminate problems like the ones facing the British and German manufacturers producing NATO's ASRAAM. Procurement systems that are more compatible throughout the process including the development phase, manufacturing phase, production phase, accounting systems, quality assurance, and quality control programs save time and money for the Governments and industry since they reduce infrastructure. Government should also consider establishing agreements to conduct reciprocal contracting activities which will lead to cost savings and efficiency.

As the world gets 'smaller', Governments need to be engaged in discussions, both domestically and internationally, if they are to ensure that favorable conditions will exist to satisfy future collaborative military requirements. These military requirements will include combined military operations, joint developments, and procurements of military systems. Being familiar with the procurement processes of ones allies or possessing the same procedures will facilitate the procurement processes used in joint military acquisitions. It will also improve interoperability concerns. Therefore, the US and German Governments should examine and assess the procurement processes of other nations and each other's in an effort to find more efficient ways of conducting acquisitions. The strengths of the systems should be implemented and exploited, while the weaknesses should be identified and addressed during international discussions. In fact, the US and Germany should develop and

propose a NATO acquisition and contracting process and an organization to execute the procurement of NATO's military materiel.

While these recommendations are ambitious, they are realistic and achievable. Until these new systems and organizations are developed and realized, there are initiatives that both the US and Germany should implement. These initiatives include the changing of laws, monitoring industry consolidations, centralized procurement, incorporation of automation into the process, advertising procedures, bidding methods, removal of cost and pricing data and oversight, and embracing debriefings.

The US should pass legislation repealing the Buy America Act and other laws and policies which inhibit market access to all potential offerors. These measures will defuse pressures from foreign firms to have restrictive legislative measures enacted in their respective countries or within the EC against the US. Some might argue that US firms will suffer. This is not likely. US firms are some of the most competitive in the world and they are flexible enough to adjust to changes in their environment. Consequently, those that perform well will receive sufficient contracts to continue to grow.

While US, German, and EC regulators will monitor and assess the implications of mergers and acquisitions to ensure that there is adequate competition, they will be artificially influencing markets. The Governments should be adjusting to the changes in the market place and not dictating market conditions. Consequently, the US must also stay engaged with the developments in the EC and make the necessary changes in its acquisition and contracting systems to facilitate joint system developments and procurements.

While it is never popular for policy makers to eliminate senior positions within their organizations, sometimes it is necessary to improve efficiency and effectiveness. The centralization of major systems

procurement would eliminate many senior positions, both military and civilian. By consolidating these procurement functions at the Office of the Secretary of Defense level, the DoD will be better able to consolidate requirements, improve interoperability of equipment, increase order quantities, reduce overhead costs, and provide one organization to conduct joint programs with allies.

The US and the FRG must improve their automation systems. These tools should be exploited to develop and integrate systems to monitor and track market research and past performance, streamline preaward functions with electronic solicitation document dissemination, electronic proposal submission, oral proposal and presentations via video teleconference. All of these initiatives will reduce cycle time and costs.

It is also recommended that one organization be responsible for maintaining and updating market and past performance information on potential offerors. This organization should be the Government's clearing house for market research and past performance activities. Another revolutionary approach would be to outsource this requirement for the collection and maintenance of the data while withholding discretionary decision authority.

While the Germans have the best intentions with the restrictive and negotiated bidding methods, they present themselves as exclusionary and reduce competition. Since the development of these bids is very similar, the Germans should consider eliminating the restrictive and negotiated methods and replace them with methods similar to the US's RFP. The RFP is presented as open to all potential offerors. A quick review of the proposals can eliminate many of the undesirable proposals.

As the US and German Governments strive to better emulate the efficiencies and practices of commercial organizations, they should remove their requirements for cost and pricing data. The policy is inefficient

and encourages distrust between the Government and the contractor.

Accurate past performance tracking and consideration during proposal evaluations would be enough of an incentive for contractors to develop accurate estimates and motivation to adhere to the contract terms.

Consequently, those that perform will receive addition contracts and those who do not will be eliminated early from the competitive range.

Therefore, the US's need to have extensive oversight of programs should be eliminated. If a contractor does not perform, they will be treated by the Government like industry would, and will not be awarded future contracts.

The last two points apply to the Germans. First, Germany should embrace debriefings, not just to avoid protest or law suits, but to educate and improve an offerors' ability to prepare proposals. An effective debriefing to a responsive contractor increases competition and provides better offers in the future. Germany should also examine how other countries within the WEAG handle protests and the opportunities at a contractor's disposal to resolve them. As more universal "hard" defense procurement policies become accepted and adhered to by the WEAG members, Germany will have to implement protest procedures that comply accordingly.

#### **C. AREAS OF FURTHER RESEARCH**

- How significant will the impact of contractor consolidation in Europe be on American corporations and on US Government procurement?
- How will EC procurements change if WEAG initiatives for a consolidated buying organization are accepted?
- Is there quantifiable data supporting or refuting the efficiency and effectiveness of the US or German acquisition processes?

- Are there quantifiable data supporting or refuting the efficiency and effectiveness of the US or German budget processes?
- Do the extensive contract administration procedures in the US result in the development, production, and fielding of better systems?



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